United States Court of Appeals
for the Second Circuit

APPENDIX

77-2035
77-2135

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Pg 5

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-2035
77-2135

UNITED STATES *ex rel.* LOUIS WOLFISH, *et al.*,
Petitioners-Appellees,

—v.—

HONORABLE EDWARD LEVI, *et al.*,
Respondents-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume I (Pages A-1 to A-400)

UNITED STATES COURT OF APPEALS
FILED
DEC 9 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

LEGAL AID SOCIETY
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PLAINTIFFS

UNITED STATES OF AMERICA ex rel.
LOUIS WOLFISH, et al
Relators

DEFENDANTS FRANKEL, J

U.S.A., EDWARD H. LEVI,
indiv. & as Attorney General
of the U.S.A., et al

See Preceeding Page for Full Title

CAUSE

Class Action Habeas Corpus,
28 U.S.C. Sec. 2241 & F.R.C.P. 23

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☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID DATE	RECEIPT NUMBER	C.D. NUMBER	STATISTICAL CARDS CARD	DATE MAILED
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UNITED STATES DISTRICT COURT DOCKET

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A 2

75 Civ 6000 U.S.A. ex rel, LOUIS WOLFISH -v- U.S.A EDWARD H. LEVI, et al

FRANKEL,J

DATE	NR.	PROCEEDINGS
11-28-75		Filed class action petition for writ of habeas corpus.
12-1-75		Filed relators class action order to show cause for a writ of habeas corpus. Respondents or their atty to show cause in writing, by affdvt memoranda, & any other appropriate submissions. Ret. 12-10-75, Rm. 202 at 10 A.M.........FRANKEL,J
12-11-75		Filed defts affdvt re notary Helise Harrington.
12-11-75		Filed defts affdvt in support of motion to dismiss.
12-11-75		Filed affdvt by Larry Taylor, Warden, of Met. Corr. Center, in opposition to petitioner's application for a show cause order, & in support of deft's motion to dismiss this case.
12-11-75		Filed deft's memo of law in opposition to the grant of a writ of habeas corpus to petitioners, & in support of motion to dismiss.
12-12-75		Filed Memorandum-Decision & Order #43526. With the concerns in view as indicated, & persuaded that the case is probably a suitable one for treatment as a class action, the court now appoints the Legal Aid Society, Federal Defender Services Unit, 150 B'way, NYC 10038, as counsel for the petitioners & the putative class they undertake to represent. It is conceivable that the petitioners will wish to objec to this order of appointment. For this purpose, the first-named petitioner, Louis Wolfish, should be produced in person for the pretrial hearing. The court now directs that there be a pretrial confere at 2:15 P.M. on Dec. 18, 1975, in Room 706. The court directs that consideration be given to the matters as indicated. The foregoing constitutes an order. Arrangements will be made for its prompt delivery to Mr. Wolfish, government counsel, & the Federal Defender Services Unit.......FRANKEL,J n/m by Pro Se Clerk ([illegible])
12-19-75		Filed ~~deft~~'s memo on behalf of respondent's in response to the directi inter alia in the Court's memo & order of 12-12-75.
12-16-75		Filed Supplemental Memorandum that in memorandum dtd 12-12-75, the address of the Legal Aid Society, Federal Defender Services Unit, is corrected for purposes of this case as The Legal Aid Society, Att: Phylis S. Bamberger, Esq., Romm 509, U.S. Courthouse, Foley Square, N.Y. 10007 (Tel. 212 732 2971)....So Ordered, FRANKEL,J m/n by Pro Se Clerk.
12-29-75		Filed Order that this proceeding is a class action on behalf of all persons detained at the Metropolitan Corr. Center. The notice attache to this order be given to each person detained at the Met. Corr. Cntr. The Legal Aid Society, Fed. Def. Serv. is to reproduce the necessary copies of the notice On 12-23-75, & deliver them to the Warden for distribution. By the end of the day of 12-24-75, the Warden is to cause a copy to be placed in each cell, & in one plainly visable publi place in each unit, or in two plainly visible public places on each floor which is without units of the Met. Corr. Cntr.....FRANKEL,J m/

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5 Civ 6000 WOLFISH -v- U.S.A. 75 Civ 6000
Page #2 FRANKEL,J

DATE	PROCEEDINGS
12-24-75	Filed Memorandum & Order #43599, re class action. The U.S. Att'y assuring us that the Gov't is willing & prepared to face the issues properly in this case, has proposed one procedural obstacle after another & the court records its rejection on the merits of the U.S. Atty's procedural position.....FRANKEL,J m/n
1-13-76	Filed relators amended petition. (By order of Judge Frankel).
1-16-76	Filed relator's affdvt & Show Cause Order for a preliminary injuction. Ret. 1-20-76
1-22-76	Filed Respondents memo in response to Court's direction to present Govt's position as to definition of subclasses.
1-26-76	Filed affdvt of J.R. Johnson, Associate Warden at (MCC).
1-26-76	Filed supplemental affdvt by Larry Taylor re policy of (MCC).
1-26-76	Filed respondents memo of law on behalf of Court's request at the hearing [illegible] 1-20-76, that parties submit memoranda on certain points.
1-27-76	Filed Respondents reply memo in opposition to relator's motion for a preliminary injunction & TRO.
1-28-76	Filed Opinion #43799 & Order that the motion for a preliminary injunction is granted. Visiting regulations not less liberal than those in force when this suit began will remain effective until further order of this court.....So Ordered, FRANKEL,J nm
2-13-76	Filed Relators memo of law in support of designation of this proceeding as a class action.
2-17-76	Filed Respondents return to the amended petition for a Writ of Habeas Corpus.
2-24-76	Filed respondents first set of interrogs & request for documents.
2-26-76	Filed Memorandum & Order #43953 on definition of class & asserted need for subclasses. Respondents urge that the court should divide the class of relators into subclasses. No ground of fact or law appears to make this desirable or "appropriate". FRCP 23(c)(4). It need not & will not be done, for reasons indicated.....So Ordered, FRANKEL,J n/m by Pro Se Clerk.
3-4-76	Filed relators interrogs to respondents Taylor, Carson & Levi.
3-24-76	Filed Respondents answers to Relators interrogs.
4-6-76	Filed respondent's answer to relator's interrog #43.
4-13-76	Filed transcript of Dec. 18, 19, 1975.
4-13-76	Filed trancript of Jan. 20, 1976.
5-17-76	Filed Relators motion pursuant to Fed. Rules of Evidence §706 for entry of an order to show cause why expert witnesses should not be appointed. Time & date to be set by Court.
5-21-76	Filed Respondent's reply to Relators motion to appoint experts pursuant to Rule 706 of the Fed. Rules of Evidence.
6-23-76	Filed Order appointing a medical panel consisting of Dr. Richard Della Penna, Dr. Patricia Ann Nolan, & Dr. John Gorman to inspect the medical unit at the Metro. Corr. Center, & they are ~~ordered~~ authorized & directed to inspect all inmate medical records, institutional records & documents, etc. as indicated. Both parties shall be entitled to present to the Court any addt'l evidence which is relevant to the resolution of the medical claims raised in the amended petition.....FRANKEL,J. n by Pro Se Clerk.
6-3[illegible]-76	Fld Respondents response to relators request to produce
7-16-76	Filed relators request to respondents (Taylor, Carlson & Levi) for production & inspection.

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DATE	PROCEEDINGS
7-16-76	Filed relators second interrogs to respondents (Taylor, Carlson & Levi
7-19-76	Filed Respondents memo of law in opposition to relators motion to compe discovery.
7-19-76	Filed Respondent's supplemental response to Relators' request for production & inspection.
7-21-76	Filed Respondents' answer to Relators' subpoena duces tecum & notice of deposition.
8-12-76	Filed Respondents second set of interrogs to Relators & request to produce.
9-1-76	Filed Respondents' response to Relators' request to produce.
9-15-76	Filed Relator's Show Cause Order & TRO for a preliminary injunction. Ret. 9-21-76, Room 618, at 4:40 P.M.
9-17-76	Filed Order that N.Y. Telephone Co., et al are enjoined from removing any of the telephone lines, extensions, etc. in use at the Met. Corr. Center, or taking any other action which would interfere with Respondents compliance with TRO & determination of Relators' motion for a prelim. inj. Service of this Order upon the N.Y. Telephone Co. by 12 P.M. on 9-15-76 shall be deemed good & sufficient service.....FRANKEL, J. n/m
10-1-76	Filed Order that the N.Y. Telephone Co's motion is granted, & that the Court's Order granted ex parte on 9-14-76 is vacated....... FRANKEL, J. n/m (Copy sent to Relators)
10-1-76	Filed Order re prelim. inj. that Respondents provide, the following tele services for inmates at the MCC, as indicated. Provisions to remain in effect until further order of this Court or final disposition of this case......FRANKEL, J. n/m & copy sent to Relators.
10-20-76	Filed Respondents notice of motion for partial summary judgment pursuan to Rule 56. Ret. 10-27-76
10-20-76	Filed Respondents Rule 9(g) Statement of facts concerning which they contend there exists a genuine issue.
10-20-76	Filed Respondents Rule 9(g) Statement of facts concerning which they contend there exists no genuine issue.
10-20-76	Filed memo of law in opposition to Relators motion for partial summary judgment & in support of Respondents motion for partial summary judgment.
10-20-76	Filed affdvt of Arthur Cassidy re motion.
10-20-76	Filed affdvt of Robert Harris, Education Specialist at MCC.
10-20-76	Filed affdvt of David Hirsch, professional photographer.
10-20-76	Filed affdvt of Larry Taylor, Warden at MCC.
10-20-76	Filed affdvt of Marshall Haimes, Research Analyst at MCC.
10-22-76	,Filed respondents affdvt & notice of motion to compel relators to respond by 11-12-76 to respondent's interrogs & production of documents. Ret. 11-1-76
10-22-76	Filed responents memo in support of motion to compel discovery.
10-29-76	Filed Order that respondents produce at MCC for inspectionnof relators counsel re floor plans requested in Interrog. #1 & other information in Interrogs #2 & #3. Respondents to supplement their answers to Interrogs listed. Relators motion is in all other respects denied for the reasons stated by the Court in the transcript of 8-16-76......FRANKEL, J. n/m Copy of Order sent to Relator by Docket Clerk.
11-4-76	Filed reply memorandum by respondents in reply to affdvt of Michael Young, in opposition to respondents motion to compel discovery.

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FRANKEL, J.

Page #4

DATE	PROCEEDINGS
11-5-76	Filed Respondents memo of law on the issue of medical care.
11-13-76	Filed Relators affdvt in opposition to Respondents application to compel petitioners to answer respondents interrogs by 11-12-
11-17-76	Filed Memo-End. on motion dtd 10-22-76. Motion granted as stated in Court.......So Ordered. FRANKEL, J. n/m & Copy sent to Relators by Dkt. Clerk.
11-19-76	Filed transcript of [illegible] dated SEPT 21, 1976
11-19-76	Filed transcript [illegible] dated SEPT 29, 1976
11-26-76	Filed Respondents return to the amendments to the amended petition.
11-26-76	Filed Respondents interrogs & request to produce relating to the amendments to the amended petition.
11-29-76	Filed Respondents memo of law re confiscation of contraband.
12-3-76	Filed affdvt & notice of motion by (Harold Konigsberg) to exclude him from this class action & allow him to proceed in an action in pursuit of his constitutional rights, etc. Ret. 12-14-76
12-13-76	[illegible] 8/29/76
12-13-76	Filed [illegible] 8/16/76
12-14-76	Filed Respondents affdvt re petition re (Harold Konigsberg). (Johnso
12-14-76	Filed Respondents affdvt re petition re (Harold Konigsberg). (Biller
12-14-76	Filed Respondents amended return to the amendments to the amended petition.
12-16-76	Filed Respondents answers to Relator's second set of interrogs.
12-29-76	Filed movant (Konigsberg's) supplemental affdvt.
12-23-76	Filed Respondent's Supplemental Response to Relator's Interrogs.
1-5-77	Filed affdvt of Larry Taylor, Warden of the Met. Corr. Center, in opposition to petitioner's motion for partial summary judgmen
1-5-77	Filed affdvt of Robert Harris, Ed. Specialist at the (MCC), in opposition to relator's motion for partial summary judgment relating to the enforcement of the "publisher rule".
1-5-77	Filed Opinion #45495 & Order. Petitioners have moved for partial summary judgment, & Respondents have made a cross-motion urging that they should have summary judgment now dismissing most of the claims pressed in relator's motion. For the extensive reasons indicated, petitioners are entitled to a partial decree enjoining, double celling, enforcement of the "publishers only" rule, failure to give receipts for seized property, & the practices respecting mail hereinabove to be found valid. Respondents are entitled to dismissal of the claims as to mail which have been rejected, etc. The other rulings are capable of enforcement, & should be enforced, within the next week or (10) days. Accordingly, petitioners should serve & file a proposed form of decree by 1-10-77. Respondents should respond not later than 1-13-77. Petitioner may reply by 1-17-77, whereupon a decree will be formulated & entered......FRANKEL, J. n/m
1-10-77	Filed Movant's (Konigsberg) Reply affdvt.
1-12-77	Fld Govt's Notice of Deposition of Albert Victory.
1-12-77	Fld " " " " " Glenn Milder
1-12-77	Fld " " " " " Susan Braunig.
1-12-77	Fld " " " " " John Parker
1-12-77	Fld " " " " " Holby Darling.
1-12-77	Fld " " " " " Michael Gardner.
1-12-77	Fld " " " " " Dana [illegible]

Continued on Page#5

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DATE	PROCEEDINGS
1-12-77	Fld Govt's Notice of Deposition of Joseph Miller.
1-12-77	Fld " " " " " Carl Lee.
1-19-77	Filed Order that respondents, employees, & successors, & all persons in concert with them are hereby enjoined from confining any member of the petitioner class at (MCC) except under the followir conditions as indicated. Single Cell Occupancy, etc.. Receipt of books, pericdicals & other reading material. Receipts for the seizure of items. Mail. Further Ordered that so much of the amended petition as seeks an order enjoining respondents from opening & inspecting mail from persons other than petitioners attys or the courts, etc. is dismissed with prejudice: & that petitioners' motion for partial summary judgment & respondents' cross-motion for summary judgment are in all other respects denied.......FRANKEL,J. n/m
1-24-77	Filed Respondent's Supplemental Answer to relators' Secon d Set of Interrogs.
1-25-77	Filed Memorandum & Order re Harold Konigsberg's motion dtd 11-30-76 who seeks either to exclude himself from the instant litigation or, alternatively, to become the representative of a subclass which he contends is inadequately represented. In addition, he requests that the present counsel for the petitioners be removed. For the reasons indicated, Mr. Konigsberg's motion is denied. So Ordered, FRANKEL,J. n/m (Copy sent to relator by Dkt. Clerk.
1-27-77	Filed letter from Paul T. Rogers requesting re-instatement as a member oi the class.
1-26-77	Filed Memo-End. on notice of motion by Paul Rogers. Motion denied. So Ordered, FRANKEL,J. n/m.
1-28-77	Filed defts affdvt for writ re (Glen Miller) incarcerated at Great Meadow Corr. Facility, Comstock, N.Y. Writ Issued & ret. 2-3-77
1-28-77	Filed defts affdvt for writ re ((Albert Victory) incarcerated at Greenhaven Corr. Facility, Stormhaven, N.Y. Writ issued. Ret. 2-2-77
1-28-77	Filed affdvt by (John Parker) re food tampering.
1-28-77	Filed Memorandum-Decision & Order re affdvt of (John Parker) a member oi class. The affdvt of Mr. Parker presents no substantial basis for considering the adequacy of representation with which the court has thus far been entirely satisfied. It is suggested, that Mr. Parker, & those who sign the petition supporting his affdvt, & other inmates of the M.C.C. would be well advised to seek legal assistance from counsel representing their class, etc......Copies sent to counsel for both sides as well as Mr. Parker.......FRANKEL,J.
1-31-77	Filed Memorandum & Order. The trial in this proceeding will commence on 2-28-77. It will be necessary for all to adhere to the schedule of pretrial proceedings heretofore settled so we can plan to proceed with all due expedition.....FRANKEL,J. n/m
2-23-77	Filed Notice of Appeal re (Konigsberg motion) to the USCA from the Order dtd 1-24-77, denying exclusion from this class action, & denying the right to proceed in this action on his own behalf & as his own counsel, etc. Copies sent to: Hon. Robert B. Fiske, Jr. 1 St. Andrews Plaza, NYC 10007 Att: U.S. Atty Louis Corsi & The Legal Aid Society Federal Defender Services Unit, U.S. Courthouse 40 Foley Square, Room 509, New York, N.Y. 10007

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FRANKEL,J.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 75-6000
LOUIS WOLFISH, etal	U.S.A., EDWARD LEVI, et al	PAGE 6 OF ___ PAGES

PROCEEDINGS

DATE	NR.	PROCEEDINGS
03-01-77		Filed affdvt & notice of motion by (Harold Konigsberg) for an order to proceed with the appeal in forma pauperis, etc. Ret. 3-10-77.
3-2-77		Filed Memo-End. on motion by (Konigsberg) dtd 3-1-77. Doubting that the order in question is appealable, & believing, in any event that the proposed appeal leacks substance & should be disallowed under F.R. App. P. 24, 2nd paragraph, the court concludes that this motion must be denied. So Ordered, FRANKEL,J. n/m & copy sent to movant by Dkt. Clerk.
2-28-77		Trial begun & continued.
3-1-77		Trial con't.
3-2-77		Trial con't.
3-3-77		Trial con't.
3-4-77		Trial con't.
3-5-77		Trial con't/
3-8-77		Trial con't.
3-9-77		Trial con't.
3-10-77		Trial con't.
3-11-77		Trial con't.
3-14-77		Trial con't.
3-15-77		Trial con't.
3-16-77		Trial con't.
3-17-77		Trial con't.
3-18-77		Trial cont'. Petitioners Rest.
3-18-77		Filed Respondent's Notice of Appeal from the USCAAfrom the opinion dtd: 1-5-77 and order dtd: 1-19-77. Mailed copies.
3-21-77		Filed Memo of Law in Support of Respondent's Objection to the Introduction of Petitioners' inamte Questionnaire into evidence.
3-22-77		Fld Writ of H/C Ad Test. for A. Victory. Writ satisfied 3-14-77... Frankell,J. & Marshal execution dtd 3-18-77.
3-30-77		Filed Writ of H/C Ad Test. for G. Miller. Writ satisfied 3-22-77... Frankel, J.
2-28-77		NON-JURY TRIAL BEGAN.
3-1-77		TRIAL CONTINUED
3-2-77		" "
3-4-77		" "
3-5-77		" "
3-8-77		" "
3-9-77		" "
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3-15-77		" "
3-16-77		" "
3-17-77		" "
3-18-77		" "
3-21-77		" "
3-22-77		" "

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. ____ PAGE 7 OF ____ PAGES

DATE	NR.	PROCEEDINGS
3-23-77		TRIAL CONT.
3-24-77		" "
3-25-77		" "
3-28-77		" "
3-30-77		TRIAL CONCLUDED. TOTAL TRIAL DAY 21. JUDGE'S DECISION-RESERVED
4-6-77		Filed petitioners' Amendments to the Amended Petition.
4-6-77		Filed petitioners's memorandum of law on support of motion for summary judgment.
4-6-77		Filed petitioners' Notice of Motion for summary judgment.
4-6-77		Filed petitioners' Statement pursuant to General Rule 9-G S.D.N.Y. in support of motion.
4-6-77		Filed petitoners' reply memorandum in support of their application for partial summary judgment.
4-6-77		Filed Affidavit of Dr. William W. Menniger, sworn to on December 27-76.
4-6-77		Filed letter, dated November 23-76, from Assist. Atty Schaffer to Judge Frankel.
4-6-77		Filed letter, dated December 20-76, from Assist. Atty Schaffer to Judge Frankel.
4-6-77		Filed letter, dated December 20-76, from Michael Young, petitioners' atty., to Judge Frankel.
4-6-77		Filed letter, dated December 29-76, from Michael Young, petitioners' atty., to Judge Frankel.
4-6-77		Filed letter, dated Jnauary 13-77, from Assist. Atty. Schaffer to Judge Frankel.
4-6-77		Filed letter, dated January 14-77, from Assist. Atty. Schaffer to Judge Frankel.
4-6-77		Filed letter, dated January 17-77, from Michael Young, petitioners' atty., to Judge Frankel.
4-6-77		Filed transcript of record of proceedings dtd: November 15-76.
4-6-77		Filed Memorandum: "...Despite Mr. Gardner's active participation in the case, the Court is unwillign and unable to act on such individual requests except as they are made in the normal course by able counsel for the pltf. class."...Frankel,J. mailed copy.
4-8--77		Filed Original records transmitted from the U^S^CA dtd 4-8-77.
4-12-77		Filed transcript of record of proceedings, dated 11-17-75
4-12-77		Filed transcript of record of proceedings, dated 2-25-77
4-13-77		Filed MEMORANDUM - Judge states that he cannot act on individual communications, this matter referred to counsel for any appropriate action to be made, FRANKEL, J. m/n.
4-11-77		Filed True copy of order from the USCA that the motion made by the appellant for leave to proceed in forma pauperis is denied and the appeal is dismissed...Fusaro, Clerk USCA. M/N
04-19-77		Filed letter of Paul T. Rogers to Judge Frankel dated 4/14/77.
04-21-77		Filed Memorandum to Counsel-Re: letters from inmates to be kept in chambers for inspection by counsel from time to time--counsel to report this arrangement to clients.-- Frankel, J. (m/n). Mailed copy to petitioner.
4/7/77		Filed stipulation for partial record to be transmitted to the USCA pursuant to Rule 11(f) FRAP
4/7/77		Filed stipulation re: inclusion of true copies to USCA of documents

DC-111A REV. 11/75

Cont'd on Page 8.

75 Civ 6000 JUDGE FRANKEL 75 Civ 6000

DATE	PROCEEDINGS
	PAGE 8 originally filed but missing from file.
4/7/77	Filed preliminary memorandum on th legal principles applicable to this lawsuit. Memorandum filed by petitioners.
4-25-77	Filed Petitioners motion for an order to show cause to be issued forthwith etc..No ret.date given.
4-25-77	Filed Petitioner's Notice of Motion for discovery of all records and documents etc...No ret. date given.
6-21-77	Filed Deft's Affdvt. to describe the conduct & results of a revised su & studyetc....
6-21-77	Filed deft's Post-trial memo of law on behalf of the respondents.
7-29-77	Filed Memorandum for counsel.....FRANKEL.J. m/n
8-22-77	Filed Memorandum for counsel.....FRANKEL.J. m/n
8-24-77	Filed Respondents' contentions. concerning the medical claims raised in paragraphs 28 through 45 ofthe complaint.
To Type 8-30-77	Filed Stipulation of facts between parties.
8-30-77	Filed Petitioners statement of the disputed questions relating to the health issues.
8-30-77	Filed Memorandum...Upon the foregoing ovservations, and upon the parties stipulations of fact and statements of their respective contentions, the question of whether there is any remediable defect in health care at the MCC is hereby referred to the Hon. Sol Schreiber, sitting as Special Master, to hear the evidence and report proposed findings of fact and conclusions of law...So Ordered....FRANEKL.J. m/n (SENT COPY TO PTIES.)..
8-31-77	Filed Petitioners affdvt. and notice of motion for an order re-opening the hearing in this case for the limited purpose of filing a stip or taking testimony on the Use of the pass system at MCC.
8-31-77	Filed Memo-End on motion filed on 8-31-77...Motion denied...So Ordered..FRANEKL.J m/
9-15-77	Filed Opinion #46335.....Accordingly, counsel for petitioners will serve and file a proposed form of final decree. Respondents will serve and file objections to the proposed form and counterpooposals to substitute for the protions deemed objectionable. These submissions and the court's final decree will be complet with all reasonalble speed....So Ordered..FRANKEL.J. m/n
9-16-77	Filed Petitioners notice to take deposition of W. Armstead. on 9-23-77.
9-[illegible]-77	Filed affdvt. of Frederick P. Schaffer, A.U.S.A. in opposition to petitioner's moti to compel further discovery by deposition in this case.
9-27-77	Filed respondents' answers to petitioners' request for admissions.
9-27-77	Filed Memorandum & Order The court's Opinion of 9-15-77 is amended as follows;At page 65,line5, the name "Dr.William Hopper" is corrected to read "Dr. Columbus B. Hopper."...So Ordered......FRANKEL.J. m/n
9-29-77	Filed order...Petitioners motion for reargument adressed to the portion of the court' decision giving inmates an option to be transferred after 60 days of confineme at MCC...the motion is denied...so ordered... Frankel, J. (m/n)
10-5-77	Filed Stipulation of facts between the parties.
10-5-77	Filed ORder ...that the petitioners may serve subpoenas for witness & documents without payment of fees & costs pussuant to 28 U.S.C. 1916(c)...Schreiber. m/n
10-12-77	Filed respondents' memorandum setting forth (1) objections to petitioners' proposed Judgement and (2) Counter proppsals for the Judgement.
10-13-77	Filed Partial Judgement...ordered that respondents their agents, eyc. all enjoined from confining any members of the petitioner class at the MCC except under the following conditions(see Judgement)...Frankel, J. mn Judg ent. 10-13-77 clerk

DATE	PROCEEDINGS
10-14-77	Filed Order...That J.P. be transferred from the conn. State Prision to MCC on 10-17- and it is forther ordered that he be detained at MCC until further order: of this court...so Ordered...Frankel, J. mn
10-18-77	Filed Transcript of record of proceedings, dated Feb 28, 1977, March 1,2,4,5, 1977
10-18-77	Filed Transcript of [illegible] proceedings, dated March 8,9, 10,11,14, 1977
10-18-77	Filed Transcript of [illegible] proceedings, dated March 15,16,17, 18,21,22,1977
10-18-77	[illegible] proceedings, dated March 23,24,25,28,29, 1977
10-18-77	Filed Memorandum...In paragraph 22 of the judgement, on lines 6 & 8 the word "indcor has been change to"outdoor". For the convience of all concerned, the court has made & initialled the change on the original decree filed in the Office o the clerk. Except as thus granted, the motion to amendē is denied...so order Frankel, J. mn
10-20-77	Filed Petitioners Affidavit & Notice of Motion for an order altering & amending the entered on 10-13-77.
10-20-77	Filed Petitioners memorandum of law.
10-21-77	Filed Respondents Affidavit in opposition to petitioner's motion for a protective o
10-21-77	Filed Respondents Affidavit in opposition to the petitioner's motion for a protecti
10-21-77	Filed Respondents Affidavit in opposition to the petioners's motion for a protectiv
10-21-77	Filed Respondents MCC, Affidavit in opposition to relators motion for a protective
10-21-77	Filed Respondents, U.S.Atty, Affiadvit in oppositon to petitioners' motion for a pr order. (Alramowitz)
10-21-77	Filed Respondebdents, A. Rivera, Affidavit in opposition to petioners motion for a protective order.
10-21-77	Filed J. Rakoff, Agfidavit in response to Petitioner's Motion for a protectivel ord
10-21-77	Filed respondents, N. Carlson Affidavit in response to Petitioner Motion for a protective order.
10-21-77	Filed Petioner Notice of Motion for reargument on 10-4-77.
10-21-77	Filed Respondents Affidavit & Notice of Motion for an order pursuant to rule 59(e) amended or alter para. 22 of the partial Judgement dated 10-13-77 & to amend memorandum dated 10-18-77 to require only indoor exercise rather than outdoor exercise or that requets for stay be denied. Ret: 10-31-77.
10-21-77	Filed Respondents memorandum in support of their motion to amend paragraph 22 of t Judgement or in the alternative to stay that paragraph.
10-21-77	Filed Respondents Notice of Appeal to the USCA 2nd Circuit from the Opinion dated 9-15-77 & the Partial Judgement ent. 10-13-77 except as to the issue of "Exe during confinement" decided at pp. 101-102 of the opinion & in paragraph 22 Partial Judgement as amended by Memorandum filed 10-18-77.
10-21-77	Filed ORDER that Petitioner Theodore Wilson be transferred from Attic Corr. Facility to the M.C.C., by Oct. 24, 1977 until the completion pendency hearing before Mag. Schreiber..........Frankel.J. m/n
10-26-77	Filed ORDER that the proposed amendment to the order and judgement o this Court dated Oct. 13, 1977 is denied.............Frankel.J.
10-28-77	Filed Phylis Shloot Bamberger(Petititioners) Affidavit in opposition to to govern Motion to amend Judgement.
11-22-77	Filed stipulation designating copies of certain missing original documents to become part of the record on appeal.

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CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO.
uis Wolfish	U.S.A.	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
28-77		Filed memorandum...Pespondents move to amend the partial judgememt by changing it again to provide in paragraph 22 for only "indoor" rather that "outdoor" exercise for people in administrative detention...Reviewing the several considerations that a decent amount of discretion is left to respondents by patial judgement as it has been formulated, the request for a amendment is denied. The accompanying requets for a stay is also denied...So Ordered ...Frankel, J. mn
-28-77		Filed Petitioner's Cross Notice of Appeal to the U.S.C.A. 2nd circuit from the partial Judgemnet dated 10-13-77 for the order dated 10-18-77, denying in part petitioners motion to amended the judgement.
31-77		Filed Petitioners Affidavit Attached to an unsigned order to show cause .
31-77		Filed Resondents amended Notice of appeal to the U.S.C.A. 2nd Circuit from each & every part of the opinion dated 9-15-77, the memorandum dated 10-28-77, & the Partial Judgement ent. 10-13-77 as amended by memorandum filed 10-18-77 in this action.
-4-77		Filed ORDER that the provisions of para 8 of partial judgement of 10-3-77 are hereby stayed up to and through Nov.15, 1977...........Frankel.J. m.n
-11-77		Filed Letter addressed to Judge Frankel from Louis Corsi, Asst US Atty, US Atty Off
11-77		Filed Letter adressed to Judge Frankel from P. Bamberger, Atty. Legal Aid Society
10-77		Filed Order That Richard Davison be retained at the Metropolitan Correctional Center, 150 Park Row, N.Y.C. until such time as he testifies for petitioners in this case....so ordered...Frankel, J. mn
-10-77		Filed True copy of Order with Marshal's return on back... writ satisfied 11-8-77 Judge Cooper.
-21-77		Filed Order....That the respondents turn over to petitioners' counsel a complete & accurate copy of Al Walker's MCC Medical File....so ordered...Frankel mn
-21-77		Filed Order....That the order dated 11-10-77 retaining Richard Davison at the MCC be vacated & it is firther ordered that Richard Daivison be brougnt as soon as possible to the Mag. where he will be turned over to the NYPD Warrent Squad on a detainer & it is further ordered that the US Marshal Service notify the NYPD Warrent Squad to appear before the Mag, as soon as possible to take R. Davison into custody& it is further ordered that certified copyies of this Order be served upon the US Marshal Service, The MCC, & U.S. Atty office Att. Assisiant US Atty David Patterson.....so ordered......Frankel, mn (2 certified copy to US Marshal)
-22-77		Filed Deft. Affiadvit & Notice of Motion for an order deciding the adequacy & representativeness of the medical files used by petioner....no ret. date.
-22-77		Filed Petitioners requests for amendments to response to interrogatories.
23-77		Filed Petitioners' Affidabit & Notice of Motion for an order requiring respondents to respond to petitioners requets for admission of facts.....
-23-77		Filed Petitioners' Affidavit & Notice of Motion for an order compelling the appear of 11 named medical paraprofessional on the staff of MCC for deposition.
1=23-77		Filed Order.....The petitioners ....ahving been permitted to proceed in forma pauperis......thta the recipieants of subpoenas for medical records prepared by counsel for the petitioner comply with said subpoenas without patment of fee & costs.....Mag schreiber...mn

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[illegible]	DEFENDANT	
USA	Hon Edward Levi	DOCKET NO. ____ PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
25-77		Filed Order......That the US Marshal for the SD of NY transfer Theodore Wilson from the MCC, 150 Park Row N.Y.C. to the custudy of official at the Attica Correctional Facility, Attica, N.Y....so ordered....Frankel, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel., LOUIS WOLFISH, HELEN ROMERO, CHARMAINE ROBINSON, MARYANNE CALLAHAN, GERALDINE HARKER, FRANCIS WOODS, DANA DYNES, WILLIE S. McCARTHA, ESTELLA FERNANDEZ, MARGARET RUSSELL, RUTH SMITH, CYNTHIA EDWARDS, BIRCHEL L. CARSON, SHERMAN GREENE, MILDRED SKEETE, MARY JORDAN, DORIS TORRS, CARMEN ESTRADA, JEREMIAH O'SULLIVAN, MAXIMA VIDAL ORTIZ, ANTHONY VICTORY, JANET FALLEY, GORDON HAGEN, GARRY LEE, LINDA SESSOMS, *et al*.,

Relators,

-against-

THE HONORABLE EDWARD LEVI, Attorney General of the United States, NORMAN CARLSON, Director of the Federal Bureau of Prisons; and LARRY TAYLOR, Warden of the Metropolitan Correctional Center, *et al*.,

Respondents.

NOTICE OF MOTION

75 Civ. 6000 (MEF)

SIRS:

PLEASE TAKE NOTICE that, upon the annexed affidavit of Michael Young, Esq., the Statement Pursuant to Rule 9-G of the General Rules of the Southern District of New York, the memorandum of law in support of Relators' motion for summary judgment, and all the other papers heretofore filed in this proceeding, the undersigned will move this Court on the twenty-seventh day of September, 1976, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure enjoining Respondents from:

(1) double-celling;

(2) requiring Relators to sleep in corridors, balconies or other non-residential areas;

(3) enforcing the "Publisher Only" rule;

(4) unnecessarily restricting Relators' possession of personal property;

(5) denying Relators an adequately equipped library and sufficient opportunites to visit that library and conduct research there;

(6) denying Relators adequate access to news sources;

(7) preventing Relators from observing searches of their rooms and failing to provide receipts for confiscated items; and

(8) interfering with Relators' mail.

Yours, etc.,

PHYLIS SKLOOT BAMBERGER, ESQ.,
THE LEGAL AID SOCIETY
Attorney for Relators

By:
MICHAEL YOUNG
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

Dated: New York, New York
September 16, 1976

To: The Honorable Raymond F. Burghardt
Clerk
United States District Court
Southern District of New York

The Honorable Robert B. Fiske, Jr.
United States Attorney
Southern District of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel. LOUIS WOLFISH, HELEN ROMERO, CHARMAINE ROBINSON, MARYANNE CALLAHAN, GERALDINE HARKER, FRANCIS WOODS, DANA DYNES, WILLIE S. McCARTHA, ESTELLA FERNANDEZ, MARGARET RUSSELL, RUTH SMITH, CYNTHIA EDWARDS, BIRCHEL L. CARSON, SHERMAN GREENE, MILDRED SKEETE, MARY JORDAN, DORIS TORRS, CARMEN ESTADA, JEREMIAH O'SULLIVAN, MAXIMA VIDAL ORTIZ, ANTHONY VICTORY, JANET FALLEY, GORDON HAGEN, GARRY LEE, LINDA SESSOMS, *et al.*,

Relators,

-against-

THE HONORABLE EDWARD LEVI, Attorney GENERAL OF THE UNITED STATES, NORMAN CARLSON, Director of the Federal Bureau of Prisons; and LARRY TAYLOR, Warden of the Metropolitan Correctional Center, *et al.*,

Respondents.

AFFIDAVIT

75 Civ. 6000 (MEF)

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MICHAEL YOUNG, being duly sworn deposes and says:

1. I am an attorney associated with the Legal Aid Society, Federal Defender Services Unit, and am one of the attorneys representing relators in this case.

2. I make this affidavit in support of Relators' motion for summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure.

3. In their amended petition Relators, who are persons confined at the New York Metropolitan Correctional Center (MCC), allege that various conditions and practices at that institution to which they are subjected violate their rights. This motion for summary judgment is made with regard to the issues of (1) overcrowding which forces double-celling and housing of some Relators in areas such as balconies, corridors, and "multi-purpose" dayroom spaces; (2) forbidding Relators from receiving books, periodicals and newspapers from family and

friends; (3) restrictions on the receipt of personal property; (4) inadequate access to legal materials; (5) inadequate access to news sources; (6) refusal to allow relators' to observe searches of their rooms and to receive a receipt for any item confiscated; and (7) interference with Relators' mail.

4. Relators are persons who are confined in the MCC either while awaiting trial, serving sentence, or awaiting shipment to another prison. The law in this Circuit makes clear that they possess basic human rights which may not unjustifiably abridged. Indeed, any restriction placed upon relators who are incarcerated solely to assure their appearance at trial is unlawful in the absence of a compelling necessity. Yet there is no necessity for the harsh conditions and practices which are imposed upon Relators at MCC and which are the subject of this motion.

5. The admissions contained in Respondents' "Return to Relators" amended petition (Return), in their responses to Relators interrogatories (Interrogatory Response) and in their papers and affidavits reveal that there can be no genuine dispute concerning the facts relevant to the determination of the issues raised by this motion. The accompanying Memorandum of Law demonstrates that upon these undisputed facts, relators are entitled to judgment as a matter of law.

Overcrowding

6. Although designed for no more than 449 inmates (Return, ¶7), the inmate population has been above that number virtually all of the time since the institution opened, and has on occasion ranged as high as approximately 600 (Return, ¶7) (population summary sheets).

7. The residential rooms on Floors 3, 5, 7, 9, and 11 North were designed to house a single person (Return, ¶7). Each of these rooms contains approximately 76 square feet.

8. Paul Silver, the architect who designed MCC has stated in sworn testimony:

> Q. Mr. Silver, in your estimation, although you planned the Metropolitan Correctional Center for a certain capacity, would it be possible in fact for that institution to absorb additional people?
>
> * * * *
>
> A. See, there are certain criteria that were brought into the planning principle. For example, the rule that we began with was that for every room we would only provide one -- to put one man in a room. I think you have a room that is very, very basic planning principle. That establishes a population capacity.
>
> Dormitories are a much more flexible kind of a thing, you see. That is the only real area in that particular facility. One of the reasons why there's been a tendency to go to single rooms is because it's a very clear and apparent violation of capacity when you try to put two people in a room. You can't put one and a third persons in a room. You can always up the population of a space, in which you put people in, and you can through more imaginative planning get better utilization of the space but there is an absoluteness of a room which is designed for one person, and to try to convert it into a two-person room, it's a clear violation of the capability of that space. There is no question there. There is more than enough, you know, objections to double-celling.
>
> MR. TOBIAS: Nothing further, you Honor.
>
> MR. HERMAN: I have nothing further.
>
> THE COURT: Thank you very much, Mr. Silver.

Ambrose v. Malcolm, 76 Civ. 190
(S.D.N.Y.), Transcript of Feb. 4,
1976 at 267-8.

9. Overcrowding at MCC has resulted in the imposition upon a fluctuating number of relators of double celling of two persons in rooms which are designed for only one (Return, ¶8).

10. At various times since MCC opened, up to and including the present time, numbers of Relators have not even been provided with living space in a residential room of the institution, but rather have been required to sleep on cots, beds,

or mattresses placed in corridors and common areas of the various housing units or in the room originally designed for magistrate's proceedings (Return, ¶10).

11. The Court of Appeals has determined that such double celling is a dehumanizing practice which constitutes a due process deprivation and which may not be condoned or tolerated (See Relator's Memorandum of Law at 5-12).

Refusal to Allow Relators to Receive Books, Periodicals, or Newspapers from Family and Friends

12. Respondents have enforced a "Publishers-Only" rule at MCC which prohibits Relators from receiving literature from any source other than the publisher or "book clubs" (Return, ¶72). Family members or friends may not, under this rule, provide Relators any published material either directly or through the mails.

13. The "Publishers-Only" rule is a violation of Relators' First Amendment rights (See Relator's Memorandum of Law at 13-15).

Restrictions on Receipt of Personal Property

14. Relators are severly limited in the amount of personal property they may possess. Except on rare occasions such as Christmas and certain Jewish holidays Relators may not receive food stuffs from their family to supplement the daily institutional diet (Return, ¶88; Interrogatory Answer No. 111). In addition Relators are not permitted to receive or possess electric shavers or personal typewriters at MCC (return, ¶88). Relators may however, purchase items such as portable radios from the Commissary if they have enough money.

15. MCC has an operational floroscope and magnetometer which could be used to inspect packages for contraband.

16. The restrictions placed upon the receipt of personal items are unnecessary and unjustified by a compelling necessity (See Relator's Memorandum of Law at 16-17).

17. In April, 1976, MCC possessed a collection of legal books, as set forth in Exhibit A to this affidavit (See Interrogatory Response 88 and Exhibit 86). This collection was substantially in compliance with Federal Bureau of Prisons Policy Statement No. 2001.2B (Set forth as Exhibit B to this affidavit).

18. In September, 1976, MCC possessed a collection of legal books, as set forth in Exhibit C to this affidavit. This collection lacks such basic research tools as the United States Law Week (both the Supreme Court and the General Law sections), the New York Law Journal, Wright's Federal Practice and Procedure, Stern and Gressman's Supreme Court Practice, Weinstein on Evidence, Frankel on Criminal Sentences, or a complete set of the Federal Bureau of Prisons Policy Statements. Additionally, it contains no state penal codes, codes of criminal procedure, or case law for any of the states in the Second Circuit or New Jersey, although a significant number of inmates at MCC are under indictment or state sentence from those jurisdictions.

19. MCC has no legal assistance program to aid inmates in the preparation of their legal papers.

20. The collection of legal materials which does exist is located in a storeroom on the second floor of MCC away from the living areas. Relators may not visit this "library" area or conduct research there. Rather, they must submit a request for a particular book to be sent to them (Return, ¶63).

21. Relators may only borrow three books from the library at one time (See "Metropolitan Correctional Center, The Law Library" set forth as Exhibit D to this affidavit).

22. Relators are not even provided with a complete list of the books in the law library (Compare Exhibit D with Exhibit C).

23. Denial of personal access to an adequately maintained Law Library deprives Relators of their constitutional right of effective access to court (See Relator's Memorandum of Law at 18-24).

Restriction on Access to News

24. When this lawsuit commenced, Relators were given no opportunity to purchase newspapers at MCC (Return, ¶73). In June, 1976, certain newspapers became available for purchase in the housing units at MCC.

25. A significant number of Relators incarcerated at MCC are indigent.

26. No free newspapers are available for relators to read, either in the residential units or through the library.

27. News periodicals are not sold at MCC, nor are they made available in the housing units or through the library.

28. This denial of access to current news sources is violative of Relators constitutional right to receive information which can not be justified by any legitimate penological need (See Relators' Memorandum of Law at 25-27).

Searches

29. Relators are not permitted to observe regular institutional searches of their rooms (Return, ¶85). Moreover, they are not provided with receipt for any items confiscated during searches (Interrogatory Response 106(b) and (c)).

30. There is no valid security rationale which excuses this invasion of Relator's privacy and the security of their property (See Relator's Memorandum of Law at 28-29).

Restrictions on Mail

31. Respondents permit Relators to engage in private conversations with their family and friends during visits and by telephone(Affidavit of Larry Taylor, submitted in response to Relator's motion for Preliminary Injunction, January 19, 1976; Response to Relators' Interrogatory #16). However, all out-going and incoming mail from Relators to and from their

family and friends is opened inspected and sometimes read outside Relators' presence by Respondents (Return, ¶¶76, 77).*

32. There is no valid security justification for this infringement upon Relator's and their family's constitutional rights (See Relator's Memorandum of Law at 30-35).

WHEREFORE, Relator's motion for summary judgment should be granted enjoining Respondents from (1) double celling; (2) housing any Relators in other than designated sleeping areas; (3) enforcing the "Publisher Only" rule; (4) restricting the possession of personal property; (5) denying personal access to adequate legal materials; (6) denying adequate access to news sources; (7) preventing Relators from viewing searches of their cells and not providing receipts for confiscated items, and (8) interfering with Relators' mail.

MICHAEL A. YOUNG

Sworn to before me this
16th day of September, 1976

Phylis Skloot Bamberger
Notary Public

PHYLIS SKLOOT BAMBERGER
Notary Public, State of New York
No. 31-4300431
Qualified in New York County
Commission Expires March 30, 1977

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*Respondents concede in their Return at ¶77 that Relators' incoming and outgoing personal mail "may be spot checked by members of the MCC staff." Bureau of Prisons Policy statement 7300.1A (attached hereto as Exhibit E) authorizes such "spot-checking" and states:

> Spot-checking is defined as a procedure for reviewing or scanning a limited number of all letters received for mailing or for distribution to the inmate body. For example, spot-checking might involve scanning one of every ten or fifteen letters being mailed from or received at the institution. It does not imply that every letter should be scanned. It should be done frequently enough to maintain security, learn about a particular problem confronting the inmate or alert the staff to any matter that may help in evaluating the inmate's progress.
>
> (*Id.* at 3)

From this definition, it is clear that "spot-checking" is a euphemism for "reading" certain inmate mail.

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LAW LIBRARY - April, 1976

1. SUPREME COURT REPORTER

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   84-91
   92-94

2. U.S. SUPREME COURT REPORTS (Lawyers ed.)

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6. MODERN FEDERAL PRACTICE DIGEST (West Pub.)

   Vols. 16, 16A, 17A, 18, 18A; Cumulative Supplement to Vols. 16-18A, 26, 26A; Cumulative Supplements t0 Vols. 26 and 26A, 39, 42, 53, 53A, 54, 55, 56

7. BLACK'S LAW DICTIONARY

8. CRIMINAL LAW REPORTER

   Vols. 16, 17, 18

9. FEDERAL PRACTICE AND PROCEDURES (3 vols.)

   Charles Wright

10. DISTRICT OF COLUMBIA CODE, Titles 1-17, 41-49

    (1973 ed.)

11. WEST NUTCRACKER SERIES

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    Criminal Law (2 copies)
    Evidence (2 copies)
    Criminal Procedure (2 copies

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12. UNITED STATES CODE ANNOTATED

Title	Section
1	1100 to end
10	1 to 3000
16	1 to 590
	591 to end
18	1 to 370
	372 to 470
	470 to 1080
	1081 to 1690
1691	2310
2311	3000
3001	3530
Rules 1-14	
15-31	
1-9	
10-17.1	
18-31	
32-end	
26	4001 to 5080
	5080 to 6300
	6301 to 6850
	6851 to 7400
	7401 to 7500
	7501 to end
Constitution	3 vols.
Amendments	1-4, 5, 6-12, 13-14, 14 to end
21	1 to 800
	801 to end

13. 10 pamphlets Title 28 (West Pub.)
6 pamphlets Title 18 (West Pub.)

14. FEDERAL DIGEST

Vols. 1-72

15. Sokol, FEDERAL HABEAS CORPUS

Title	Section
28	2241 to 2253
	2254
	2281 to 2500
	2501 to end

Rules of the Supreme Court
Rules of the Court of Claims
Rules of the Customs Court
Rules of Appellate Procedure
Rules of U.S. Court of Appeals

Federal Rules of Evidence

29	217 to end
42	1 to 405
	406 to 1399
	1891 to 1984
	1985 to 2010
	2011 to end
46	682 to 800
	801 to end

16. Kamisar, MODERN CRIMINAL PROCEDURES

17. Vol. 62, Federal Rules Decisions

A 24

BUREAU OF PRISONS **WASHINGTON, D. C. 20537**

Policy Statement

2001.2B

5-8-72

SUBJECT: ACCESS TO LEGAL REFERENCE MATERIALS AND LEGAL COUNSEL AND PREPARATION OF LEGAL DOCUMENTS

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1. POLICY. It is the intent of the Bureau of Prisons to afford inmates reasonable access to legal materials, legal counsel and a reasonable opportunity to prepare their legal documents. The inmates program will continue without undue disruption by legal activities except in those instances where inmates are confronted with imminent deadlines established by the court in which the inmates lawsuits are pending.

2. PURPOSE. The purpose of this Policy Statement is to set forth the policies to be applied throughout the system. In certain instances the Policy Statement is purposely general to enable individual institutions, within these guidelines, to promulgate local rules and regulations which are most appropriate to their needs.

All institutions are to submit copies of their local policy statements which implement this Policy Statement to the Office of General Counsel and Review within 60 days from this date.

* 3. DIRECTIVE AFFECTED. Policy Statement 2001.2A dated 6-29-71 is hereby rescinded. Form BP-ADM-6 is discontinued.

* 4. PROVISIONS FOR LEGAL RESEARCH MATERIALS.

a. In the fall of 1971, the United States Supreme Court found the California Department of Corrections inmate library regulations, which were similar to the Bureau of Prisons, to be deficient in that they deprived the indigent inmate of an opportunity to consult basic legal reference in preparation of legal actions. Therefore, we are expanding the content of libraries, and revising the methods of acquisition of the legal materials as well as the receipt and handling of these materials within the institutions.

b. In order to provide uniformity and meaningful resource materials consistent with the needs of each institution we will acquire the following for each institution:

1) United States Code Annotated

a. Title 18 - all volumes (Criminal Code and Criminal Procedures)

b. Title 28 - Sections 2241 to end (Habeas Corpus and Motions to Vacate Sentences)

c. Title 28 - Volumes containing Supreme Court Rules, Federal Rules of Appellate Procedures, and U.S. Court of Appeals Rules

d. Federal Rules of Civil Procedures (in pamphlet form)

e. Title 21 - (Food and Drug)

f. Title 26 - Sections 4001 to end (Narcotic Offenses)

g. Title 42 - Sections 1975 - 2010

h. U.S. Constitution, Amendment 1 to end

2) Black's Law Dictionary

3) United States Law Week (Bureau of National Affairs)

4) Criminal Law Reporter (Bureau of National Affairs)

5) Hall and Kamisar, Modern Criminal Procedure

6) Bureau of Prisons Policy Statements of interest to inmates to be maintained in notebook form.

c. In each adult institution we intend to acquire in addition to the above the current issues of:

1) United States Supreme Court Reports

2) Federal Reporter Second

3) Federal Supplement

d. The Central Office Librarian will acquire and distribute the basic law library materials to each institution. Previously acquired materials should be retained, and inmate-donated books and materials may be added to the collection. In case there is a question as to the acceptance of a particular volume, the Office of General Counsel should be consulted.

e. Maintenance of the materials once received will be the responsibility of the institution. Each institution should appoint one person to be designated "law librarian." This person should, if at all possible, have some familiarity with library, business or clerical type work. Most materials once acquired will need little maintenance, however, the Criminal Law Reporter and the United States Law Week are looseleaf publications with weekly supplements which must be correctly filed if these services are going to be of use as intended.

f. It is preferable that each institution set aside a sufficiently large room where the books may be kept and where the inmates may work at tables without the need for removing the materials. In planning for the expanded law library, especially of the adult institutions, it must be kept in mind that as each reporter is obtained it becomes a permanent part of the collection. Therefore, in selecting the site for the law library, the expanding nature of the collection should be taken into consideration.

g. It is contemplated that in each adult institution, only one set of the case reporters will be obtained for the use of all inmates. With respect to the basic resource materials, however, additional sets will be furnished when it can be shown that inmate assignment prohibits frequent access to the main law library.

h. Incumbent on the purchase of these additional materials is that they be available for inmate use as needed. Where possible, evening and weekend hours should be provided. Institution copying equipment may be made available to reproduce materials needed for research outside the library area. When this is done, procedures should be established for an inmate to request a reasonable amount of reproduced material. It is suggested that the request form contain a space for the inmate to indicate why material is needed outside the time made available in the library. By providing ample hours for library usage and by making the copying equipment available, when possible, multilation and theft of legal materials can be minimized. Legal materials are expensive to maintain, so supervision of the library area should be provided as necessary to protect the materials. It will be the institution's responsibility to maintain the collection intact and notify the librarian in the Central Office of permanently missing or damaged volumes so that they can be replaced. All inmates using the library should be advised of the rules which govern its use, and of the injury to all which can result from misuse of the facility provided. Unauthorized materials from the library found in an inmate's possession should of course be considered as theft or destruction of government property.

i. Each institution should separately submit to the Office of General Counsel a copy of its plan to implement the Policy Statement within sixty (60) days from this date. This should describe the area set aside for the legal materials, the hours the materials will be available, the person designated to supervise the law library, and the copying arrangements if any to be provided. If, to make the materials freely accessible to all inmates, more than one set of basic reference materials is necessary, please indicate the number needed. When doing so, please explain where it is intended each set will be used.

5. PURCHASE AND DISPOSAL OF LAW BOOKS AND OTHER LEGAL MATERIALS BY INMATES.

a. If an inmate has the financial means to purchase law books, he shall be allowed to do so unless there is a compelling reason to the contrary. It is inappropriate for an administrator to make the determination that the specific material sought by an inmate is not relevant to his case. If there appears to be clear and compelling reasons to disallow a purchase, the Office of the General Counsel should be advised before a final determination of the matter is made.

b. Law books and other materials are to be purchased only from the primary sources of supply, i.e. the publisher of law books; the clerk of court and/or a judge of the court in the case of court documents.

c. Since the institutions will be maintaining the basic reference books there should be no need to accumulate all books purchased by inmates. An inmate may donate a particular book to the library when he is finished with it, if he wishes to do so and the institution agrees to accept the offer. The physical facilities of the institution and the nature of the book are appropriate factors to be considered, i.e. whether additional books can be readily accommodated and whether the book is broad in applicability. In the event a book is not to be acquired, it should be sent home or destroyed, whichever the inmate prefers.

d. The present accumulation of obsolete and irrelevant materials may be disposed of but case reports (Federal Supplements; Federal Reporter; United States Reports) already in the library should be retained. Further accession of these reporters should be made only by mutual agreement as indicated above.

6. PREPARATION OF LEGAL MATERIALS BY INMATES.

a. Inmates should be allowed to have a reasonable amount of time to prepare their documents. What is reasonable depends upon the individual circumstances. Inmates who are required to meet deadlines in connection with pending litigation in general should be given more latitude than those who are preparing to institute suit and are not required to file within a given period. Documents presented for submission to the courts should always be forwarded. If they are threatening or indecent, a special cover letter should accompany the document explaining Bureau policy and relevant background factors and data.

* b. In 1969, the United States Supreme Court held that unless there was a reasonable alternative, one inmate could not be prohibited from assisting another in the preparation of his legal matters. Therefore, unless the institution has an active, on-going legal assistance program, one inmate should be allowed to assist another in the research for and the preparation of legal documents.

* c. Inmates in segregation status should, as far as possible, be given the opportunity to work on their legal matters and have access to legal reference materials equal to those persons in general population.

d. Preparation of legal documents in living quarters during "off duty" hours may be authorized. Factors which might preclude such arrangements could include the individuals involved or the peculiar housing accommodations.

7. USE OF TYPEWRITERS.

a. The advantage of submitting typewritten documents is well established. Thus unless it is demonstrated that the use of typewriters is not feasible in a particular institution, their use should be allowed either through inmate clerks to whom handwritten documents are submitted by the individual inmates or typed individually, or submitted to public stenographers, whichever procedure is in accordance with institution policy.

b. If there is to be a delay in having documents typed, the inmates should be so advised, and he may transmit handwritten papers to the court.

8. RETENTION OF ATTORNEYS.

a. Inmates should be allowed to contact attorneys for the purpose of representing them.

b. While it is permissable to advise an attorney of the funds which the inmate has available, and it is many times desirable to counsel with the inmate, if the inmate has attained his majority and is mentally competent to handle his own affairs, we are not to interfere with the financial arrangement between attorney and client. Neither are we to act as a guarantor or collector of the fees. The payment of retained attorney's fees is a matter between attorney and client. Administrative Form 6 is hereby discontinued.

9. ATTORNEY VISITS.

a. Visits by retained and appointed attorneys and by attorneys requested by an inmate or his family in contemplation of prospective legal representation shall be permitted.

b. Specific regulations pertaining to the frequency of visits shall not be established due to the fact that the number of visits necessary is dependent upon the nature and urgency of the legal problems involved.

c. The attorney should normally make an appointment with the Chief Executive Officer or his authorized representative prior to each visit but every effort should be made to accommodate an attorney's visit where prior notification was not practicable.

d. The attorney shall identify himself as the attorney for whom the visit has been approved by showing the letter from the inmate or his family requesting the visit or by showing such other information that would identify him as an attorney of the inmate he has requested to see.

e. The Bureau of Prisons reserves the right to refuse admission to one of its facilities to those who fail to comply with regulations or who seek to exploit offenders. If there is any question about the identity of the attorney or his qualification as an attorney in good standing, the matter should be referred to the Office of General Counsel and Review.

f. Visits between the attorney and his client shall not be subject to auditory supervision. Tape recordings may be used by the attorney during the course of his visit when he agrees in writing in advance of the interview that the only purpose of the recording is to facilitate the attorney-client relationship. Attachment A is a sample of a statement which might be used to assure compliance with this section.

10. CORRESPONDENCE BETWEEN ATTORNEY AND CLIENTS.

a. Correspondence addressed to an attorney shall be mailed from the institution unopened and uninspected. A statement to the attorney,
* from the Chief Executive Officer, cautioning against 1) use of this mail for purposes other than those within the purview of the attorney client relationship, 2) transmittal of contraband, or 3) forwarding

* of any matter on to unauthorized correspondents, should
be attached. The attorney should also be advised that mail
** addressed to the inmate will be opened and inspected in
the presence of the inmate. Attachment B is a sample of
that statement.

b. Correspondence addressed to an inmate by an attorney may be opened in the presence of the inmate solely for the purposes of inspection for physical enclosures constituting contraband. This mail is not to be read nor copied. Enclosures, however, may be examined to make certain that they are within the scope of the attorney-client relationship. The contraband need not be returned to the sender but may be referred to the appropriate investigating agency and the sender may thereafter be precluded from the provisions of this policy statement with the approval of the Office of General Counsel.

c. Incoming correspondence shall be stamped immediately on arrival, on the envelope and letter, to show time of receipt. When the election is made under (a) above to have the mail opened in the inmate's presence, the contents shall be marked to show time of delivery upon opening the envelope.

d. When, in emergency circumstances, a telephone call between the attorney and inmate is authorized, the institution staff shall assure that the person is an attorney, and shall then not monitor the conversation.

Norman A Carlson

NORMAN A. CARLSON, Director
Bureau of Prisons

ATTACHMENT A

I, ____________________, a licensed attorney in the State of ________________, with offices at ______________________, ______________________________, visiting ______________________, on ________________. 19 __, agree that my visit with this inmate is for the purpose of facilitating the attorney-client relation and for no other purpose. I agree that any tape-recording or other recording made by me will be used only to facilitate this relationship.

____
(Signature)

ATTACHMENT B

This institution retains the right to open mail from attorneys to inspect for physical enclosures constituting contraband. This mail will not be read or copied, since it is assumed to be within the purview of the attorney-client relationship. It should not be used for other purposes. The use of this mail for other purposes may result in preclusion of the correspondent from the provisions of this policy statement. The inspection will be done in the presence of the inmate. All materials sent to or received from an inmate not authorized herein, or by Bureau policy, shall constitute contraband within the meaning of Title 18, United States Code, Section 1791.

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WARDEN

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CURRENT LIST OF BOOKS AT LAW LIBRARY OF MCC
SEPTEMBER, 1976

I. REPORTERS

United States Reports, Lawyers Edition Volumes
37-45

United States Supreme Court Reporter - Volumes 1-94a

Federal cases - Volumes 1 to 300

Federal Second Reports - Volumes 300 to 529 with current advance sheets

Federal Supplement - Volumes 200 to 407 with current advance sheets

II. DIGESTS

Volume 62 of Federal Rules decisions

Modern Federal Digest Volumes:

16 - 2 volumes
16A - 3 volumes
17 - 3 volumes
17A - 2 volumes
18 - 2 volumes
18A - 2 volumes
26 (26 supplement)
26A
39
42
53
53A
54
55
56

Shepards' citations for Federal and United States reports

Federal Digest Volumes 1 to 72

Abbott's Volume - 4

III. STATUTES

USCA

Title 5 - complete
6
7 - 1100 to end
10 - 1 to 3000 (2 copies)

Constitution Article 1 §1 to §8 clause 3

Title 16 §§ 1 to 480
§§ 461 to 891
§§ 1 to 590 (2 volumes)
§§ 591 to end
§§ 832 to end (2 copies)

Title 18 Rules 32 to 42

Title 18 Rules 1 to 14 (2 copies)

Criminal Rules - 15 to 31
32 to 42
10 to 17.1
1 to 9

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Title 18 Criminal Procedure 32 to end
15 to 31
48 to end

Title 18 §§ 371 to 470
§§10181 to 1690
§§18 to 31
§§1 to 370
§§471 to 1080
§§1691 to 2310

Criminal Rules 1 to 9
10 to 17.1
18 to 31

Title 18 §§1691 to 2310
Title 21 §§1 to 800
§§801 to end

Title 26 §1 to 800
§§4001 to 5080
§§6301 to 6850
§§5081 to 6300
§§6851 to 7400
§§7401 to 7500
§§7501 to end (2 volumes)

Title 28 rules of Appellate Procedure

28 §§2241 to 2253
29 §§217 to end
28 §2254
28 §§2255 to 2280
§§2281 to 2500

28 Rules of bankrupcy

Court of Claims, and Court of Customs

28 §§2241 to 2252
§§2255 to 2280
§§2501 to end

Title 29 §§217 to end
Title 42 §§1891 to 1984
Title 42 §§1 to 405
§§1 to 405
§§406 to 1399
§§2011 to end (2 volumes)
§§1891 to 1984
§§1985 to 2010

Title 46 §§1801 to end (4 volumes)

Cons't. 5th Amendment
6th to 12th Amendment
Article 3 to Article 7

Cons't. Article 14 (2 volumes)

Cons't. Amendments 6 to 12

Amendment 13 to 14 (2)

Amendment 5

Amendments 14 to end

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Article 1 & 8 C 14 to Article 2

Amendments 1 to 4

New York State Statutes, McKinney's Edition

Volumes 4, 27, 40, 42, 49 1/2, 59, 62

New Jersey - Volume NJJA 17

District of Columbia, Code

IV. PAMPHLETS

You and the Parole Board

Rule 35

Rules of MCC Library

Speedy Trial Rules

Motion 2255

Title 21, §846

Sentencing Procedures

Interstate Agreement on Detainees

Inmate Request Forms

Time Sheets

U.S. Parole regulation 40100.26

V. OTHER

Federal Jury practice and Institutions Volumes 1 and 2
Evidence In A Nutshell
Legal Research
Jurisdiction
Criminal Law
Criminal Procedure
Business Law
New York Court Rules (1972)
Mason & Beany, American Constitutional Law
Decision of Comptroller 1972-1973
Martindale Hubbell 1960
Black's Law dictionary
Kamisar - Modern Criminal Procedure
Modern legal forms
Federal Rules Criminal Procedure (16 copies)
Federal Rules of Evudence (16 copies)
Federal Rules of Appellate Procedure (16 copies)
Federal Rules of Civil Procedure (2 copies)
United States Prison Law (Sol Rubin)
Sokol, Federal Habeas Corpus
Benders, forms Volume 4A
Modern, legal forms 6481 to end
Social Reform & The Constitution
You and The Law (Readers Digest) - 1973
Criminal Law Reporter

Volume 16
17
18
19

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Legal Research, William Statsky
Recent Developments in Correctional Case Law
United States Bureau of Prisons Policy Statements
United States attorney, Bulletins
Volume 23, Nos. 18, 19, 20, 26
Volume 24, Nos. 3, 4, 5, 7, 8, 9, 10, 11, 12, 13
Rubin - United States Prison Law

METROPOLITAN CORRECTIONAL CENTER

THE LAW LIBRARY

The Law Library is maintained for the benefit of all residents of the M.C.C. and requires the cooperation and assistance of the entire population.

The rules and regulations of the Law Library are necessary to allow each inmate the opportunity for maximum use of the available books and material.

The Law Library cannot engage in research, preparation of legal papers or act in the capacity of a lawyer.

Only Federal law and Federal books are available.

The Law Library can only fill your request when a complete citation is given- ie: (389 Federal Supplement.)

No law book will be issued without a duly executed inmate request and duly signed receipt form.

No more than 3 books will be issued at any one time.

Books must be returned no later than 3 days after issuance.

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   2) U.S. Code Annotated Amendments (1-14)
   3) U.S. Code Annotated Constitution-Article 1 Section 1, to Article 1 Section 8

B. Federal Supplement- Volume 200 thru 406

C. Blacks Dictionary

D. Decisions of the U.S. Supreme Court- 1963-1964 term-thru-1974-1975 term.

E. Modern Federal Practice Digest-Volume 16 thru 18A, 26 and 26A, 39, 42

F. Federal Reporter-2nd series-Volume 300 thru 527

G. Supreme Court Reporter Volume 1 thru 94(A)

H. Federal Rules Decisions Volume 62

I. Federal Digest 1-74

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BUREAU OF PRISONS **WASHINGTON, D. C. 20537**

Policy Statement

7300.1A

SUBJECT: CORRESPONDENCE REGULATIONS

3-16-72

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1. PURPOSE. To establish, encourage, and insure meaningful correspondence procedures for sentenced and unsentenced prisoners in federal institutions.

2. DIRECTIVES AFFECTED. Policy Statement 7300.1 (Manual Bulletin96(Rev.) dated 12-20-62 is hereby superseded.

3. DISCUSSION. Constructive, wholesome contact with the community is a valuable therapeutic tool in the overall correctional process. At the same time, basic controls need to be exercised in order to protect the security of the institution, individuals and/or the community-at-large.

The size and complexity of each institution, the degree of sophistication of inmates confined in each of the facilities, and other variables indicate the necessity for flexibility in correspondence regulations.

All institutions are authorized to establish open correspondence regulations. If an institution can justify the need to retain limited or restricted correspondence, the request and justification will be submitted to the Assistant Director, Division of Institutional Services, for review and final determination.

The institution Policy Statement concerning correspondence should be given the widest and most complete distribution possible to staff and inmates.

4. PROCEDURES FOR OPEN CORRESPONDENCE. Open correspondence privileges may be accorded to inmates who demonstrate a willingness to accept this privilege in a responsible and mature manner. This responsibility implies that all correspondence will be directed toward socially useful and rehabilitative goals. Evidence that a particular inmate is violating the privilege of open correspondence by becoming involved in illegal activities, or whose correspondence is frequently rejected for reasons outlined in 4,e, may be placed on the restricted correspondence list for such time as the adjustment committee deems appropriate. Inmates who regularly mail an excessive number of letters, or who regularly attempt to correspond with persons and/or businesses unknown to them except through ads in a newspaper or magazine, may also be placed on the restricted list, as deemed appropriate by the adjustment committee.

Specific care should be given during the orientation period and thereafter in helping inmates understand their responsibility for open correspondence. Attention should be given to conditions which cause unnecessary work loads on staff or embarrassment to the inmate, his family, or community members. Many problems can usually be eliminated by definitive guidelines centering around correspondence with inmates in other institutions, family members of other inmates, and persons not known prior to commitment, and the solicitation of catalogues, educational material, price lists, unauthorized newspapers, printed material, free samples, etc.

5. PROCEDURES FOR RESTRICTED CORRESPONDENCE. There may be occasions when an inmate will be required to submit a list of correspondents for approval. Generally, this determination will be made by the classification committee or treatment team at the time of classification. Inmates whose correspondence may be restricted include major security risks, major participants in organized criminal activities, and notorious or highly publicized offenders. When it is necessary to set up a restricted correspondence list, the following guidelines are applicable:

a. Members of the Immediate Family and Close Relatives. There should be no question about the propriety of correspondence with the inmate's father, mother, wife or husband, and children. Other relatives including brothers, sisters, aunts, grandparents, cousins, etc., may be placed on the approved list, if the inmate wishes to correspond with them, following such evaluation as is warranted and practical. This judgment can usually be made on the basis of the probation officer's presentence report, and interview of the inmate.

b. Non-Relatives. Inmate correspondence with friends, former business associates, and other persons outside the immediate family may be authorized whenever it appears that such correspondence will not adversely affect the inmate's chances of rehabilitation or that it will not be detrimental to the well-being of the inmate or his correspondent. Correspondence with former business associates, must be limited to social matters. As a general rule, social correspondence will be limited to those persons known by the inmate prior to his commitment, although unusual circumstances may occasionally warrant an exception to this general rule.

c. Correspondents with Criminal Records. The existence of a criminal record, in and of itself, should not constitute a barrier to proposed correspondence. Consideration should be given to the nature and extent of the criminal record weighed against the aims to be achieved in permitting such correspondence. This principle is particularly applicable to relatives who may have a record of arrests and convictions. The guiding consideration or criteria for all correspondence should be: (1) is the correspondent genuinely interested in the inmate or just a chance acquaintance; or (2) does the correspondent seek to continue a genuine friendship or is the correspondence likely to result in some future relationship detrimental to the inmate or to the correspondent?

d. Verification Procedure. Each year it becomes increasingly difficult to obtain information from law enforcement agencies on proposed correspondents. For this reason, an attempt should be made to secure necessary information from other resources, including the inmate, the proposed correspondent, and occasionally the probation officer or other community resource. Each institution will need to plan its own verification procedures, depending upon the sophistication of the inmates with whom they are concerned and knowledge of resources for verification.

e. Number of Authorized Correspondents. The number names which may be on the approved list of correspondents is to be limited to a reasonable number, but generally a maximum of 12 outgoing letters a week will be authorized.

6. GENERAL PROCEDURES FOR ALL CORRESPONDENCE

a. Number of Letters Allowed. We recognize the importance of maintaining family and community contacts and for this reason the government will pay postage on a "reasonable" number of letters. Use of certified or registered mail will be permitted providing the inmate has funds available to pay for the use of these services.

Chief Executive Officers are authorized to set the number of letters per week to overseas correspondents (including Alaska and Hawaii) for which the institution will pay air postage.

Ordinarily, no maximum number shall be set for the number of incoming letters any one inmate shall receive during a week.

An arbitrary limitation need not be placed on the number of pages in either outgoing or incoming letters, but inmates shall be advised to keep their outgoing correspondence to a "reasonable" length.

* b. Inspection of Mail. All incoming mail, except mail from U. S. Courts, Members of Congress, and attorneys, may be opened to inspect generally for contraband, including content which is likely to promote illegal activity, or conduct contrary to Bureau regulations. Mail from U. S. Courts and Members of Congress will be opened and inspected only in the presence of the inmate, and only for the purpose of detecting enclosures constituting contraband. Attorney mail will be handled pursuant to P.S. 2001.2B. *

Each institution shall establish procedures for monitoring all outgoing and incoming mail. In the juvenile and youth institutions, the camps, and in the adult correctional institutions and reformatories, "spot-checking" of most incoming mail should provide sufficient control. "Spot-checking" is defined as a procedure for reviewing or scanning a limited number of all letters received for mailing or for distribution to the inmate body. For example, spot-checking might involve scanning one of every ten or fifteen letters being mailed from or received at the institution. It does not imply that every letter should be scanned. It should be done frequently enough to maintain security, learn about a particular problem confronting the inmate or alert the staff to any matter that may help in evaluating the inmate's progress. For the adult penitentiaries and the Medical Center more careful scrutiny may be desirable. All institutions will adopt a procedure whereby both the incoming and outgoing mail of a particular inmate may be subjected to close scrutiny.

The number of inmates whose mail is being given such attention should be kept to a minimum, consonant with the mission of the institution. The adult penitentiaries particularly, but other institutions as well, will wish to give close scrutiny to the outgoing and incoming mail of notorious racketeers, subversives, inmates who present difficult adjustment problems, serious escape risks, the mentally ill and perhaps others. Responsibility for maintenance of such a listing shall rest with the Associate Warden or Associate Warden and the Chief, Classification and Parole. Reading, scanning or spot-checking either incoming or outgoing mail must not interfere with prompt handling of the mail.

c. Rejection of Letters. During the Admission-Orientation period, and regularly thereafter, all inmates should be advised of the reasons for which incoming and outgoing mail will be rejected. Pursuant to these revised regulations all inmates must now assume personal responsibility for the contents of their correspondence. In general, inmates should be cautioned against including any of the following kinds of material in their letters:

(1) Any material which might violate postal regulations, i.e., threats, blackmail, contraband or which indicate plots of escape.

(2) Discussions of criminal activities.

(3) No inmate may be permitted to direct his business while he is in confinement. This does not go to the point of prohibiting correspondence necessary to enable the inmate to protect the property and funds that were legitimately his at the time he was committed to the institution. Thus, an inmate could correspond about refinancing a mortgage on his home or sign insurance papers, but he could not operate a mortgage or insurance business while in the institution.

(4) Letters containing codes or other obvious attempts to circumvent these regulations will be subject to rejection.

(5) Insofar as possible, all letters should be written in English, but every effort should be made to accommodate those inmates who are unable to write in English or whose correspondents would be unable to understand a letter written in English. The criminal sophistication of the inmate, the relation-

ship of the inmate and the correspondent are factors to be considered in deciding whether correspondence in a foreign language should be permitted.

A rejected letter, either incoming or outgoing, should ordinarily be returned to the author, with a brief explanation for the rejection. The author should also be notified that he may protest the rejection, and the complaint will be referred to an official other than the individual who originally disapproved the correspondence for review.

In addition, the inmate should be notified of the rejection of any letter addressed to him.

Questionable letters may be referred to the appropriate supervisor, associate warden or warden for review. Letters which contemplate a crime should be referred to the appropriate investigating agency.

d. Prosecution for Violations of Postal Regulations. All inmates should be cautioned during the Admission-Orientation period and regularly thereafter that all letters placed in the U. S. Mail are placed there upon the request of the inmate, who must assume personal responsibility for the contents of each letter he or she deposits. Threats, extortion, etc., may result in prosecution for violation of the U. S. Postal regulations. The institution cannot assume responsibility for any such material being included in either incoming or outgoing letters but whenever such material is discovered in the incoming mail, the material may be returned to the sender, or turned over to the appropriate law enforcement agency for possible prosecution.

e. Attorneys. Inmates shall be permitted to correspond with attorneys in conformity with Bureau of Prisons Policy Statement, 2001.2A dated June 29, 1971.

f. Recording of Incoming and Outgoing Mail. Some institutions may wish to establish a procedure for keeping a record of the mail of certain selected inmates, when this is necessary and desirable.

g. Correspondence While in Admission-Orientation, Holdover Status, and of Unsentenced Prisoners. It is of course desirable that inmates in Admission-Orientation and "holdover" status be permitted to receive and send letters particularly to members of their immediate family during these particularly difficult periods. Until the inmate's status is determined, each inmate may be permitted to write to at least one and possibly two close relatives immediately, on the basis of an evaluation of whatever information is available. It is particularly important that inmates in "holdover" status, as a result of bus or other forms of transportation, be permitted correspondence privileges as similar to those of all regularly confined inmates as circumstances will permit.

There will be no limitation or restriction on correspondence for unsentenced prisoners. Sealed letters may be mailed to attorneys of record, judges, the prosecutors in the district where committed or where charges are pending. Other letters will be inspected for contraband only and every attempt will be made to allow unrestricted mail privileges as long as sound custodial practices are followed.

h. Correspondence for Inmates in Segregation and Administrative Segregation. Inmates in segregation shall be allowed full correspondence privileges, unless his misconduct involves a serious violation of correspondence regulations.

A person who seriously violates institution mail regulations should not suffer indefinitely the loss of his basic correspondence privilege. It is obvious, however, that such violations should result in close scrutiny of the offender's mail until such time as it seems evident that further violations will not occur. Loss of other institution privileges, i.e., movies, participation in arts and crafts, etc., may be used by the Adjustment Committee for violations of correspondence privileges.

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i. *Correspondence with Inmates of Penal Institutions. Inmates are allowed to correspond with persons confined in other penal institutions provided they are members of his immediate family. Normally, correspondence with other inmates who are not family members will not be permitted except in unusual circumstances such as a pre-existing male/female relationship which upon investigation shows that:

a. The relationship is bona fide and existed before commitment.

b. The two proposed correspondents can show there is a genuine interest in the other party's welfare.

c. The staff at both institutions agree to the correspondence and agree that such correspondence would be beneficial to both parties.

Inmates may correspond with inmates in other institutions providing the correspondence involves legal matters, in which the inmates are parties or witnesses in civil or criminal court action.*

7. SPECIAL PURPOSE LETTERS. For inmates on the restricted correspondence list, the warden may authorize special purpose letters in addition to or apart from the regular allowance of outgoing correspondence to persons on the approved mailing list. Authorization of Special Purpose Letters shall be the responsibility of the Classification and Parole Officer or such other member of the staff as may be designated by the warden to supervise inmate correspondence. Special Purpose Letters may be approved for mailing when, in the discretion of the C & P Officer or other designated officer, they are legitimate, necessary, related to matters which cannot conveniently be handled by regular correspondence, or it may be a single letter to a person not included among the correspondence initially approved.

a. Petitions to courts, writs of habeas corpus, motions, appeals, and other legal papers shall be forwarded promptly to the appropriate court as a Special Purpose Letter payable by the government. If an inmate desires the institution to certify the mailing of particular correspondence for documentation purposes, i.e., legal, detainers, business or personal purposes, a procedure should be set up for maintaining this information in the central file.

b. There should be no need for Special Purpose Letters for those inmates who have open correspondence privileges.

8. PRISONER'S MAIL BOX (PMB). See Bureau of Prisons Policy Statement 7300.2A dated December 28, 1967.

9. INMATE CORRESPONDENCE WITH REPRESENTATIVES OF THE PRESS AND NEWS MEDIA

See Bureau of Prisons Policy Statements 1220.1A and 1220.6/7300.96.

* 10. REFERRAL TO REGIONAL OFFICE. Whenever the Chief Executive Officer is doubtful about the propriety of any incoming or outgoing letter, or has any question concerning an interpretation of the regulations, he should refer the problem to the Case Management Regional Administrators. *

* 11. INSTITUTION POLICY STATEMENT ON CORRESPONDENCE. Upon receipt of this Policy Statement, each institution will revise and update their local policy issuance on this subject. Two copies of the local policy statement shall be directed to the office of the Regional Director, upon completion. *

Norman A. Carlson

NORMAN A. CARLSON
Director
Bureau of Prisons

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---------------------------------x

UNITED STATES ex rel., LOUIS
WOLFISH, HELEN ROMERO, CHARMAINE
ROBINSON, MARYANNE CALLAHAN,
GERALDINE HARKER, FRANCIS WOODS,
DANA DYNES, WILLIE S. McCARTHA,
ESTELLA FERNANDEZ, MARGARET
RUSSELL, RUTH SMITH, CYNTHIA ED-
WARDS, BIRCHEL L. CARSON, SHER-
MAN GREENE, MILDRED SKEETE, MARY
JORDAN, DORIS TORRS, CARMEN ES-
TRADA, JEREMIAH O'SULLIVAN, MAXI
MA VIDAL ORTIZ, ANTHONY VICTORY,
JANET FALLEY, GORDON HAGEN, GARRY
LEE, LINDA SESSOMS, et al.,

Relators,

-against-

THE HONORABLE EDWARD LEVI, Attor-
ney General of the United States,
NORMAN CARLSON, Director of the
Federal Bureau of Prisons; and
LARRY TAYLOR, Warden of the
Metropolitan Correctional Center,
et al.,

Respondents.
---------------------------------x

75 Civ. 6000 (MEF)

STATEMENT PURSUANT TO RULE 9-G OF THE GENERAL RULES OF THE SOUTHERN DISTRICT OF NEW YORK

Pursuant to Rule 9-G of the general rules of this Court, Relators submit, by their attorney, Michael A. Young, the following in support of their motion for summary judgment in their favor on the ground that there are no genuine issues of material fact to be tried on the claims mentioned below and Relators are entitled to judgment in their favor as a matter of law.

1. Relators are persons who are confined at the New York Metropolitan Correctional Center (MCC), either while awaiting trial, serving sentence, or awaiting shipment to another prison.

Overcrowding

2. Since its opening in August, 1975, overcrowding at MCC has resulted in the double celling of a fluctuating number of Relators by confinement of two Relators in a single residential room designed to house only one person.

3. At various times other Relators have been forced to sleep on cots, beds, or mattresses placed in balconies and other common areas of the facility.

"Publisher Only" Rule

4. Relators are prohibited from receiving literature from their family or friends at MCC. The only reading material which they may receive from outside the facility must be sent directly from the publisher or in some cases "book clubs".

Personal Property

5. Except on rare occasions at religious holidays Relators may not receive packages or food stuffs from their families or friends.

6. Relators are not permitted to receive or possess electric shavers or personal typewriters.

Access to Legal Materials

7. The law library collection at the MCC lacks a variety of federal and state law research materials.

8. The legal collection is located in a store room. Relators may not visit this area to conduct legal research, but rather must submit a written request for a particular book to be sent to them.

Access to News

9. Relators are not given daily free access to newspapers and periodicals. Moreover, until May, 1976, Relators could not purchase newspapers in the institution. Relators are still not permitted to purchase news periodicals.

Searches

10. Respondents refuse to permit Relators to observe searches of their rooms and personal effects.

11. Relators are not provided receipts for any personal items confiscated during such searches.

Mail

12. Relators are permitted to have private conversations with family members and friends during visits and by telephone. Nevertheless, MCC rules permit all incoming and outgoing mail with the exception of mail from attorneys, courts and public officials to be opened, inspected, and occasionally read without cause outside Relators' presence. These rules also permit the opening and inspection of mail from attorneys and the courts without cause.

MICHAEL A. YOUNG
PHYLIS SKLOOT BAMBERGER
Attorneys for Relators
THE FEDERAL DEFENDER SERVICES UNIT
THE LEGAL AID SOCIETY
United States Court House
Room 509
Foley Square
New York, New York 10007
(212) 732-2971

MICHAEL MUSHLIN, ESQ.
Of Counsel

— MR. Schaffer

LGC:n

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.*,
LOUIS WOLFISH, *et al.*,

Relators,

v.

EDWARD LEVI, *et al.*,

Respondents.

U.S. DISTRICT COURT
D 10-20-76
S.D. OF N.Y.

NOTICE OF MOTION

75 Civ. 6000 (MEF)

PLEASE TAKE NOTICE that upon the Rule 9(g) Statements, affidavits, and memorandum of law submitted herewith, respondents, by their attorney, Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, will bring on for hearing on the 27th day of October, 1976, in Room 618, United States Courthouse, Foley Square, New York, New York, at such time as the Court may direct, a motion for an order granting partial summary judgment in favor of respondents pursuant to Rule 56 of the Federal Rules of Civil Procedure.

MEF

Dated: New York, New York
October 18, 1976

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York,
Attorney for Respondents

By: ______________________
FREDERICK P. SCHAFFER
Assistant United States Attorney
Office and Post Office Address:
U. S. Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Tel. No.: (212) 791-1973

TO: THE LEGAL AID SOCIETY
FEDERAL DEFENDER SERVICES UNIT
U. S. Courthouse, Room 509
Foley Square
New York, New York 10007

LGC:n

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x 10-20-76

UNITED STATES OF AMERICA *ex rel.*
LOUIS WOLFISH, *et al.*,

Relators,

-against- 75 Civ. 6000 (MEF)

EDWARD LEVI, *et al.*,

Respondents.
- x

RESPONDENTS' RULE 9(g) STATEMENT OF FACTS CONCERNING WHICH THEY CONTEND THERE EXISTS A GENUINE ISSUE

Pursuant to Rule 9(g) of the General Rules of this Court, the respondents submit that there are genuine issues to be tried as to the following material facts relating to relators' motion for summary judgment dated September 16, 1976:

1. The effect or impact on the physical and mental health and well-being of inmates at the Metropolitan Correctional Center ("MCC") resulting from the double-bunking of some inmates at the MCC.

2. The effect or impact on the physical and mental health and well-being of inmates at the MCC resulting from the temporary confinement of inmates in non-residential areas of the MCC.

3. The duration and frequency of the temporary confinement of inmates in non-residential areas of the MCC.

4. The adequacy of the facilities, accomodations, staff and services at the MCC to meet the needs of the inmates when more than 499 individuals are confined at the MCC.

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5. The specific conditions under which inmates have been double-bunked or temporarily confined in non-residential areas of the MCC, including but not limited to the description of residential units at the MCC which is contained in paragraph 1 of Respondents' other 9(g) Statement and incorporated herein by reference.

6. The measures taken by officials at the MCC and Bureau of Prisons to transfer and transport individuals out of the MCC as quickly as possible.

7. The adequacy of the MCC general library.

8. The burden, effect or impact on inmates at the MCC of the publisher only rule.

9. The burden, effect, or impact on inmates at the MCC resulting from their inability to conduct legal research in the law library.

Dated: New York, New York

October 18, 1976

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York,
Attorney for Respondents

By: Frederick P. Schaffer
FREDERICK P. SCHAFFER
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Tel. No.: (212) 791-1973

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - -x

UNITED STATES OF AMERICA ex rel. :
LOUIS WOLFISH, et al., :

Relators, :

- against - : 75 Civ. 6000 (CEF)

EDWARD LEVI, et al., :

Respondents. :
- - - - - - - - - - - - - - - - -x

10-20-76

RESPONDENTS' RULE 9(g) STATEMENT OF FACTS CONCERNING WHICH THEY CONTEND THERE EXIST NO GENUINE ISSUE

Pursuant to Rule 9(g) of the General Rules of this Court, the respondents submit that there are no genuine issues to be tried as to the following material facts relating to relators' motion for summary judgment dated September 16, 1976 and respondents' cross motion dated October 18, 1976:

1. The following is a description of each of the residential units at the MCC and the furnishings in each as of approximately August 18, 1976:

SECOND FLOOR

Honor Unit

This housing unit is located on the second floor and consists of three clusters of residential rooms: one cluster of five rooms; one cluster of seven rooms; and one cluster of eight rooms. These clusters open onto a multi-purpose area which consists of approximately 674.97 square feet of floor space.

(i) Five Room Cluster

The residential rooms in this cluster which open onto a corridor (6'-6" x 31'-9 1/4", or approximately [illegible].97

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sq. ft.)* have the following (approximate) square feet of floor space and contain the following number of beds:

Rm. No.	Sq. Ft.	Beds
A-201	103.3	1
A-202	114.79	2
A-203	98.5	1
A-204	118.45	2
A-205	115.12	2

(ii) Eight Room Cluster

The residential rooms in this cluster which open onto a corridor (8'-6" x 31'-9 1/4", or approximately 298.97 sq. ft.) have the following (approximate) square feet of floor space and contain the following number of beds:

Rm. No.	Sq. Ft.	Beds
B-207	117.2	2
B-208	115.84	2
B-209	98.5	1
B-210	114.79	2
B-211	98.5	1
B-212	115.17	2
B-213	115.42	2
B-214	101.91	1

(iii) Seven Room Cluster

The residential rooms in this cluster which open onto a corridor (8'-6" x 31'-9 1/4", or approximately 298.97 sq. ft.) have the following (approximate) square feet of sq. ft.)* have the following (approximate) square feet of floor space and contain the following number of beds:

---

* The room and area dimensions and square footage computations relating to the MCC contained hereinafter are based upon the information contained in the architectural plans of the MCC, relevant portions of which are submitted herewith and made a part hereof as Exhibit 1. So as to protect against unwarranted and unnecessary disclosure of the information contained therein (see transcript of the hearing before this Court on August 16, 1976) we request that the Court place these plans under seal.

Rm. No.	Sq. Ft.	Beds
A-201	103.3	1
A-202	114.79	2
A-203	98.5	1
A-204	118.45	2
A-205	115.12	2

(ii) Eight Room Cluster

The residential rooms in this cluster which open onto a corridor (8'-6" x 31'-9 1/4", or approximately 296.97 sq. ft.) have the following (approximate) square feet of floor space and contain the following number of beds:

Rm. No.	Sq. Ft.	Beds
B-207	117.2	2
B-208	115.84	2
B-209	98.5	1
B-210	114.79	2
B-211	98.5	1
B-212	115.17	2
B-213	115.42	
B-214	101.91	1

(iii) Seven Room Cluster

The residential rooms in this cluster which open onto a corridor (8'-6" x 31'-9 1/4", or approximately 296.97 sq. ft.) have the following (approximate) square feet of floor space and contain the following number of beds:

---

* The room area dimensions and square footage computation relating to the MCC contained hereinafter are base upon the information contained on the architectural plans of the MCC, relevant portions of which are submitted herewith and made a part hereof as Exhibit 1. So as to protect against unwarranted and unnecessary disclosure of the information contained therein (see transcript of the hearing before this Court on August 16, 1976) we request that the Court place these plans under seal.

Rm. No.	Sq. Ft.	Beds
C-215	114.62	2
C-216	115.84	2
C-217	98.5	1
C-218	114.79	2
C-219	98.5	1
C-220	115.17	2
C-221	122.9	2

Each room contains two windows (51" x 22" each), a washbasin and toilet, chair, mirror and light fixture, towel rack and shelf, light and wall bracket.*

There are two shower rooms (7'- 3" x 4'-9"; 9'-9 1/2" x 5'0") each containing two shower-heads with a dressing room (5'- 6" x 7'-3"; 5'-3" x 7'-1") for use by the inmates housed in this unit. In addition, there is common bathroom (containing washbasin and toilet) available for use by inmates.

A special room (16'- 9" x 9'-7") with a private shower as well as toilet and washbasin is located in this area and is equipped for and used as an Emergency or Intensive Care Unit. Room A-201 also contains a private shower and is used, as needed, by the Hospital Unit as an isolation room.

(iv) Other Rooms

Staff Office (11'-1" x 12'x 1")

Linen & Utility Rm. (9'-3" x 11' - 11")

Janitorial Rm. containing a clothes washer and drier

Pantry (9'-4 1/2" x 9'-3", or 86.3 sq. ft.) containing:

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* Desks (w/3 drawers), small tables and cabinets and additional chairs have been distributed throughout this unit for use by inmates in their rooms.

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1 coffee urn (4 unit)

1 toaster

1 microwave oven and table

1 wall unit containing a 2-burner stove, 2 door refrigerator, ice-maker and sink

1 drink dispenser (double unit)

Visiting Rm.* containing:

1 bathroom

1 water fountain

Search Rm.

Multipurpose Area (28'- 9" x 22'- 9", or approximately 674.97 sq. ft.) containing:

20 chairs

2 couches

1 pay telephone

2 long-distance telephones **

1 25" color T.V.

12 tables

1 U-shaped work table

1 two-unit mail box (personal & attorney mail)

1 jogging machine

1 exercycle

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* This room is not used; inmates housed on this floor receive visitors in the 5th Floor visiting room.

** Installed as of October 7, 1976; see preliminary injunction issued in this action on September 30, 1976.

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THIRD FLOOR

There is one residential unit on the Third Floor consisting of a total of 24 rooms arranged in three clusters of 8 rooms each; these clusters open onto a single story multipurpose room (see below). Except for individual residential rooms, bathroom and shower facilities and the pantry, all areas in this unit have wall to wall carpeting.

(i) Residential Rm:

Residential rooms in each cluster open onto a corridor* (34'-6" x 10'-0", or approximately 339.35 sq. ft) and have the following (approximate) dimensions and contain the following furnishings:

No. of Rms	Dimensions	Sq. Ft.
12	11'-6" x 7'6"	75.9
8	11'-6" x 7'-8"	76.99
4	11"-6" x 7'-9"	77.66

Window (20 of 24 rooms) (22" x 51 1/2")

Bunkbed

Desk (w/3 drawers)

Chair

Washbasin and toilet

Towel rack and shelf

Mirror and light fixture

Lamp and wall bracket

In addition, there are three showers in this unit, one in each cluster. Twenty of the 24 residential rooms

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* Each corridor has two windows, each window measuring approximately 17" x 52".

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either presently have a book shelf or will have a book shelf after security modifications are completed.

(ii) Multipurpose room (42' x 38'-4", or approximately 1497.9 sq. ft.) and a separate recreation room with corridor (approximately 352.64 sq. ft.) containing:

Windows (Multipurpose Rm):

2 windows, each window measuring
  9'-0 x 6'-3" divided into 4 vertical
  sections and 2 horizontal sections

Window(Rec. Rm.):

1 window 13'-6" x 3'-4" divided into
  3 vertical sections

1 pool table

3 couches

3 lounge chairs

23 chairs

5 tables (eating)

4 coffee tables

2 pay telephones

2 long distance telephones*

2 T.V.'s (one color)

1 ping pong table

1 jogging machine

1 iron and ironing board

1 clothes washer and drier

1 janitorial closet

1 linen closet

1 two-unit mail box (personal & attorney
  mail)

1 water fountain

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* Installed as of October 7, 1976.

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1 exercycle

1 medicine ball

1 typewriter

(iii) Visiting room (approximately 318.57 sq. ft.), with a separate search room, containing:

1 window 15'-3" x 3'-4"

1 table

3 coffee tables

5 chairs

1 couch

1 water fountain

(iv) Food Pantry (approximately 365.71 sq. ft) containing:

1 serving table

1 microwave oven and table

1 drink dispenser (double unit)

1 automatic coffee machine

1 refrigerator/freezer

1 ice machine

1 condiment table (w/6 unit holder)

1 counter (w/sink and storage area)

trash barrels

FIFTH AND SIXTH FLOORS

There are two housing units on these floors designated as 5 North and 5 South.

5 South

5 South consists of 6 clusters of 8 rooms each (on two floor levels) for a total of 48 rooms. These room clusters open onto a two-story multipurpose room (see below). Except for individual residential rooms, bathroom and showers facilities and the pantry, all areas of this unit have wall-to-wall carpeting.

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(i) Residential Rm:

Residential rooms in each cluster open onto a corridor. The three corridors on the lower lower level each measure approximately 29'-6" x 10-0", or 95 sq. ft.; the three corridors on the upper level, including the landing, measure approximately 33'-2" x 10'-0", or 319.77 sq. ft. The residential rooms have the following dimensions and contain the following furnishings:

No. of Rms.	Dimensions	Sq. Ft.
24	7'-6" x 11'6"	75.9
16	7'-8" x 11'6"	76.99
8	7'-9" x 11'-6"	77.66

Window (22" x 51 1/2")
Bed (w/2 drawers)
Desk (w/3 drawers) and chair
Lamp and wall bracket
Book shelf
Towel rack and shelf
Mirror and light fixture
Washbasin

In addition, two toilets, one shower, and two additional washbasins are located in each 8 room cluster, for a total of 12 toilets, 6 showers and 12 washbasins.

(ii) Multipurpose room with alcoves (42' x 38'-4", or approximately 1649.52 sq. ft) and a separate recreation room (approximately 278.99 sq. ft.) containing:

Windows (Multipurpose Rm):
2 windows, each measuring 12'-6' x 9'-2" divided into 4 vertical sections and 2 horizontal sections
1 window measuring 12'-6' x 7'-2 1/2" divided into 3 vertical sections and

LC:lhd
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2 horizontal sections

Windows (Recreation Rm):

1 window measuring 22'-6" x 3'-4' divided into 5 vertical sections

19 tables (eating)

7 coffee tables

3 lounge chairs

66 chairs

4 couches

2 pay telephones

2 long distance telephones*

1 two-unit mailbox (personal and attorney mail)

1 bookcase

1 water fountain

1 pool table

1 ping pong table

1 exercycle

1 exercise chair

1 color T.V.

1 black and white T.V.

1 iron and ironing board

1 sewing machine

1 jogging machine

1 set of wall-exercise pulleys

1 medicine ball

1 typewriter

1 clothes washer and drier

linen closet

janitorial closet (with cleaning equipment)

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* Installed as of October 7, 1976.

(iii) Education area with corridor (approximately 919.84 sq. ft.) containing:

black board

tack board

table

15 school desks

(iv) Pantry with corridor (approximately 520.78 sq. ft.) containing:

1 microwave oven and table

1 toaster

1 coffee maker

1 refrigerator/freezer

1 ice machine

1 sink and cabinet unit

(v) Visiting Rm (21'-3" x 19'-1/2", or approximately 415.35 sq. ft.) with adjacent inmate search room, containing:

1 window 19' x 3'-4"
divided into 5 vertical sections

1 bathroom

26 chairs

tables

couches

1 water fountain

5 North

5 North consists of 6 clusters of 8 rooms each (on two floor levels) for a total of 48 rooms. These room clusters open onto a two-story multipurpose room (see below).

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Except for individual rooms, bathroom and shower facilities and the pantry, all areas of this unit have wall-to-wall carpeting.

(i) Residential Rooms:

Residential rooms in each cluster open onto a corridor.* The three corridors on the lower level each measure approximately 34'-6" x 10" -0', or 339.35 sq. ft.; the three corridors on the upper level, including stairway landings, measure approximately 38'-2" x 10'-0", or 364.12 sq. ft. The residential rooms have the following dimensions and contain the following furnishings:

No. of Rms.	Dimensions	Sq. Ft.
24	7'-6" x 11'-6"	75.9
16	7'-8" x 11'-6"	76.99
8	7'-9" x 11'-6"	77.66

Window (22" x 51 1/2")
Bed (w/2 draws)
Desk (w/3 drawers) and chair
Lamp and wall bracket
Book shelf
Towel rack and shelf
Mirror and light fixture
Washbasin and toilet

In addition, there is one shower located in each 8 room cluster, for a total of 6 showers.

(ii) Multipurpose room with alcoves (42' x 38'-4", or approximately 1649.52 sq. ft.) and a separate recreation room (approximately 276.99 sq. ft.) containing:

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* Each corridor has two windows, each window measuring approximately 17" x 52".

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Windows (Multipurpose Rm):

2 windows, each measuring 12'-6" x 9'-2"
divided into 4 vertical sections and
2 horizontal sections

1 window measuring 12'-6" x 7'-2 1/2"
divided into 3 vertical sections and 2
horizontal sections

Windows (Rec. Rm.):

1 window measuring 22'-0" x 3'-4" divided
into 5 vertical sections

13 tables (eating)

30 chairs

4 coffee tables

3 couches

3 lounge chairs

1 two-unit mailbox (personal & attorney mail)

2 pay telephones

2 long distance telephones*

2 color T.V.'s

1 bookcase

1 water fountain

1 typewriter

1 medicine ball

1 jogging machine

1 exercycle

1 ping pong table

1 clothes washer and drier

linen closet

janitorial closet (w/ cleaning equipment)

---

* Installed as of October 7, 1976.

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(iii) Education area with corridor (approximately 919.84 sq. ft.) containing:

blackboard
tack board
1 pool table

(iv) Pantry with corridor (approximately 320.78 sq. ft.) containing:

1 serving table
1 microwave oven and table
1 drink dispenser (double unit)
1 coffee urn (4 unit)
1 toaster
1 refrigerator/freezer
1 ice machine
1 condiment table (w/5 unit holder)
1 counter (w/sink and storage area)
trash barrels
1 sink

(v) Visiting Rm (21'-8" x 19'-1/2", or approximately 415.35 sq. ft.) with adjacent inmate search room, containing:

1 window measuring 19' x 3'-4' divided into 5 vertical sections
1 bathroom
26 chairs
tables
couches
1 water fountain

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Administrative and Staff Offices

Adjacent to the education areas on 5 North and 5 South are a total of eight offices used by the Unit Management Team, and for counseling; in addition 2 bathrooms (washbasin and toilet) are located in this area, one in 5 North and one in 5 South.

SEVENTH AND EIGHTH FLOORS

There are two housing units on these floors designated as 7 North and 7 South.

7 North

7 North consists of 6 clusters of 8 rooms each (on two floor levels) for a total of 48 rooms. These room clusters open onto a two-story multipurpose room (see below). Except for individual residential rooms, bathroom and shower facilities, and the pantry, all areas of this unit have wall to wall carpeting.

(i) Residential Rooms

Residential rooms in each cluster open onto a corridor.* The three corridors on the lower level each measure approximately 34'-6 x 10'-0", or 339.35 sq. ft.; the three corridors on the upper level, including stairway landings, measure approximately 38'-2" x 10'-0", or 364.12 sq. ft. The residential rooms have the following dimensions and contain the following furnishings:

No. of Rms.	Dimensions	Sq. Ft.
24	7'-6" x 11'-6"	75.9
16	7'-8" x 11'-6"	76.99
8	7'-9" x 11'-6"	77.66

37 rooms have single beds (w/2 drawers)

11 rooms have bunk beds (w/2 drawers)

---

* Each corridor has two windows, each window measuring approximately 17" x 52".

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Window (22" x 51 1/2")
Desk (w/3 drawers) and chair*
Lamp and wall bracket
Book shelf
Towel rack and shelf
Mirror and light fixture
Washbasin and toilet

In addition, there is one shower located in each 8 room cluster, for a total of 6 showers.

(ii) Multipurpose room with alcoves (42' x 38'-4", or approximately 1649.52 sq. ft.) and a seperate recreation room (approximately 278.99 sq. ft.) containing:

Windows (Multipurpose Rm):
2 windows, each measuring 12'-6" x 9'-2"
  divided into 4 vertical sections and
  2 horizontal sections
1 window measuring 12'-6" x 7'-2 1/2"
  divided into 3 vertical sections and
  2 horizontal sections
Windows (Recreation Rm):
1 window measuring 22'-6" x 3'-4"
  divided into 5 vertical sections
57 chairs
14 tables (eating)
1 two-unit mailbox (personal & attorney mail)
3 coffee tables
3 lounge chairs
3 couches
2 pay telephones
2 long distance telephones **

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* Two chairs are included in most rooms with bunk beds.

** Installed as of October 7, 1976.

2 color T.V.'s

1 pool table

1 water fountain

1 typewriter

1 jogging machine

1 medicine ball

1 exercycle

1 ping pong table

1 clothes washer and drier

linen closet

janitorial closet (w/ cleaning equipment)

(iii) Education area with corridor (approximately 919.84 sq. ft.) containing:

blackboard

tack board

table

14 school desks

(iv) Pantry with corridor (approximately 520.78 sq. ft) containing:

1 serving table

1 microwave oven and table

1 toaster

1 coffee urn (4 unit)

1 sink

1 drink dispenser (double unit)

1 refrigerator/freezer

1 ice machine

1 condiment table (w/6 unit holder)

1 counter (w/sink and storage area)

trash barrels

LC:lnd
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(v) Visiting Rm (21'-8" x 19'-1/2", or approximately 415.35 sq. ft.) with adjacent inmate search room, containing:

- 1 window measuring 19' x 3'-4" divided into 5 vertical sections
- 1 bathroom
- 2 couches
- 9 lounge chairs
- 8 chairs
- 2 tables
- 3 coffee tables
- 1 water fountain

7 South

7 South consists of 6 clusters of 8 rooms each (on two floor levels) for a total of 48 rooms. These room clusters open onto a two-story multipurpose room (see below). Except for individual rooms, bathroom and shower facilities and the pantry, all areas of each unit have wall-to-wall carpeting.

(1) Residential Room:

Residential rooms in each cluster open onto a corridor.* The three corridors on the lower level each measure approximately 34'-6" x 10'-0", or 339.35 sq. ft.; the three corridors on the upper level, including stairway landings, measure approximately 36'-2" x 10'-0", or 364.12 sq. ft. The residential rooms have the following dimensions and contain the following furnishings:

No. of Rms	Dimension	Sq. Ft.
24	7'-6" x 11'-0"	75.9
16	7'-8" x 11'-6"	76.99
8	7'-9" x 11'-6"	77.66

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* Each corridor has two windows, each window measuring approximately 17" x 52".

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Window (22" x 51 1/2")
Bed (w/2 drawers)
Desks (w/3 drawers) and chair
Lamp and wall bracket
Towel rack and shelf
Mirror and light fixture
Washbasin and toilet

In addition, there is one shower located in each 8 room cluster, for a total of 6 showers.

(ii) Multipurpose room with alcoves (42' x 38'-4", or approximately 1649.52 sq. ft.) and a seperate recreation room (approximately 278.99 sq. ft.) containing:

Windows (Multipurpose Rm):
2 windows, each measuring 12'-6" x 9'-2"
  divided into 4 vertical sections and
  2 horizontal sections
1 window measuring 12'-6" x 7"- 21/2"
  divided into 3 vertical sections and
  2 horizontal sections
Windows (Recreation Rm):
1 window measuring 22'-6 x 3'-4"
  divided into 5 vertical sections
43 chairs
9 tables (eating)
1 coffee table
3 lounge chairs
3 couches
6 swivel chairs
2 pay telephones
2 long distance telephones*
2 color T.V.'s
1 water fountain

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* Installed as of October 7, 1976.

1 pool table
1 ping pong table
1 medicine ball
1 typewriter
1 jogging machine
1 exercycle
1 clothes washer and drier
linen closet
janitorial closet (w/ cleaning equipment)
1 two-unit mailbox (personal & attorney mail)

(iii) Education area with corridor (approximately 919.84 sq. ft.) containing:

blackboard
tack board
table
16 school desks

(iv) Pantry with corridor (approximately 520.78 sq. ft.) containing:

1 serving table
1 microwave oven and table
1 coffee urn (double unit)
1 drink dispenser (double unit)
1 refrigerator/freezer
1 ice machine
1 sink
1 condiment table (w/6 unit holders)
1 counter (w/sink and storage area)
trash barrels

(v) Visiting Room (21'-8" x 19'-1/2", or approximately 415.35 sq. ft) with an adjacent inmate search room, containing:

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1 window measuring 19' x 3'-4"
divided into 5 vertical sections
1 bathroom
2 couches
8 swivel chairs
14 chairs
3 tables
2 coffee tables
1 water fountain

Administrative and Staff Offices

Adjacent to the education areas on 7 North and 7 South are a total of eight offices used by the Unit Management Team, and for counseling; in addition, 2 bathrooms (washbasin and toilet) are located in this area, one in 7 North and one in 7 South.

NINTH AND TENTH FLOORS

There are two housing units on these floors designated as 9 North and 9 South.

9 North

9 North consists of 6 clusters of 8 rooms each (on two floor levels) for a total of 48 rooms. These room clusters open onto a two-story multipurpose room (see below). Except for individual residential rooms, bathroom and shower facilities and the pantry, all areas of this unit have wall-to-wall carpeting.

(i) Residential Rooms

Residential rooms in each cluster open onto a corridor.* The three corridors on the lower level each measure approximately 34'-6" x 10'-0", or 339.35 sq. ft.;

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* Each corridor has two windows, each window measuring approximately 17" x 52".

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the three corridors on the upper level including stairway landings, measure approximately 38'-2" x 10'-0" or 364.12 sq. ft. The residential rooms have the following dimensions and contain the following furnishings:

No. of Rms.	Dimensions	Sq. Ft.
24	7'-6" x 11'-6"	75.9
16	7'-8" x 11'-6"	76.97
8	7'-9" x 11'-0"	77.66

23 rooms have bunk beds (w/2 drawers)
25 rooms have single beds (w/2 drawers)
Desk (w/3 drawers) and chair*
Lamp and wall bracket
Book shelf
Towel rack and shelf
Mirror and light fixture
Washbasin and toilet

In addition, there is one shower located in each 8 room cluster, for a total of 6 showers.

(ii) Multipurpose room with alcove (42' x 38'-4', or approximately 1649.52 sq. ft.) and a separate recreation room (approximately 278.99 sq. ft.) containing:

Windows (Multipurpose Rm):
2 windows, each measuring 12'-6 x 9'-2"
  divided into 4 vertical sections and
  2 horizontal sections
1 window measuring 12'-6" x 7'-2 1/2"
  divided into 3 vertical sections and
  2 horizontal sections

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* Two chairs are included in most rooms with bunk beds.

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Windows (Recreation Rm):

1 window measuring 22'-0" x 3'-4"
divided into 5 vertical sections

8 tables (eating)

32 chairs

6 coffee tables

4 couches

3 lounge chairs

2 pay telephones

2 long distance telephones*

2 color T.V.'s

1 black and white T.V.

1 jogging machine

1 typewriter

1 medicine ball

1 exercycle

1 water fountain

1 two-unit mailbox (personal and attorney mail)

1 pool table

1 ping pong table

1 clothes washer and drier

linen closet

janitorial closet (w/ cleaning equipment)

(iii) Education area with corridor (approximately 919.84 sq. ft.) containing:

blackboard

tack board

table

16 school desks

(iv) Pantry with corridor (approximately 529.73 sq. ft.) containing:

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* Installed as of October 7, 1976.

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1 serving table
1 microwave oven and table
1 drink dispenser (double unit)
1 coffee urn (4 unit)
1 toaster
1 refrigerator/freezer
1 sink
1 ice machine
1 condiment table (w/6 unit holders)
1 counter (w/sink and storage area)
trash barrels

(v) Visiting Room (21'-8" x 19'-1/2", or approximately 415.35 sq. ft.) with adjacent inmate search room, containing:

1 window measuring 19' x 3'-4"
divided into 5 vertical sections
11 chairs
2 tables
2 coffee tables
1 couch
9 swivel chairs
1 bathroom
1 water fountain

9 South

9 South consists of 6 clusters of 8 rooms each (on two floor levels) for a total of 48 rooms. These room clusters open onto a two-story multipurpose room (see below). Except for individual rooms, bathroom and shower facilities and the pantry, all areas of this unit have wall-to-wall carpeting.

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(i) Residential Rooms:

Residential rooms in each cluster open onto a corridor.* The three corridors on the lower level each measuring approximately 34'-6 x 10'-0", or 339.35 sq. ft.; the three corridors on the upper level, including stairway landings, measure approximately 36'-2" x 10'-0", or 364.12 sq. ft. The residential rooms have the following dimensions and contain the following furnishings:

No. of Rms	Dimension	Sq. Ft.
24	7'-6" x 11'-6"	75.9
16	7'-3" x 11'-6"	76.99
8	7'-9" x 11'-6"	77.66

Window (22" x 51 1/2")
bed (w/2 drawers)**
Desk (w/3 drawers) and chair
Towel rack and shelf
Mirror and light fixture
Washbasin and toilet

In addition, there is one shower located in each 8 room cluster, for a total of 6 showers. Heavy duty security screens have been placed over the windows in 24 of the residential rooms.

(ii) Multipurpose room with alcoves (42' x 36'-4", or approximately 1649.52 sq. ft.) and a separate recreation room (approximately 278.99 sq. ft.):

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* Each corridor has two windows, each window measuring approximately 17" x 52".

** Except the 8 rooms used for disciplinary segregation which contain a metal-frame bed bolted to the floor. When necessary, for safety reasons or to prevent destruction of property, on occasions, the desk and chair have been removed. In addition, the carpeting in the corridor for this 8-room cluster has been removed and replaced with vinyl tile.

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Windows (Multipurpose Rm):

2 windows, each measuring 12'-6" x 9'-2"
divided into 4 vertical sections and
2 horizontal sections

1 window measuring 12'-6" x 7'-2 1/2"
divided into 3 vertical sections and
2 horizontal sections

Windows (Recreation Rm):

1 window measuring 22'-6" x 3'-4"
divided into 5 vertical sections

7 tables (eating)
32 chairs
6 coffee tables
4 couches
2 lounge chairs
2 pay telephones
2 long distance telephones*
2 color T.V.'s
1 bookcase
1 water fountain
1 pool table
1 ping pong table
1 jogging machine
1 typewriter
1 medicine ball
1 exercycle
1 clothes washer and drier
linen closet
janitorial (w/ cleaning equipment)
2 mailboxes

(iii) Education area with corridor (approximately 919.84 sq. ft.) containing:

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* Installed as of October 7, 1976.

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tack board

table

16 school desks

(iv) Pantry with corridor (approximately 520.78 sq. ft.) containing:

1 serving table

1 microwave oven and table

1 drink dispenser (double unit)

1 coffee urn (4 unit)

1 toaster

1 sink

1 refrigerator/freezer

1 ice machine

1 condiment table (w/6 unit holders)

1 counter (w/sink and storage areas)

trash barrels

(v) Visiting Room (21'-8" x 19'-1/2", or approximately 415.35 sq. ft.) with an adjacent inmate search room containing:

1 window measuring 19' x 3'-4" divided into 5 vertical sections

1 bathroom

1 water fountain

12 chairs

2 tables

3 coffee tables

1 couch

5 swivel chairs

Administrative and Staff Offices

Adjacent to the education areas on 9 North and 9 South are eight offices used by the Unit Management Team, and for counseling; in addition, two bathrooms (washbasin and toilet) are located in this area, one in 9 North and one in 9 South.

ELEVENTH AND TWELFTH FLOORS

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11 North*

11 North consists of 6 clusters of 8 rooms each (on two floor levels) for a total of 48 rooms. These room clusters open onto a two-story multipurpose room (see below). Except for individual rooms, bathroom and shower facilities and the pantry, all areas of the unit have wall-to-wall carpeting.

(i) Residential Rooms

Residential rooms in each cluster open onto a corridor.** The three corridors on the lower level each measure approximately 34'-6" x 10'-0", or 339.35 sq. ft.; the three corridors on the upper level, including stairway landings, measure approximately 38'-2" x 10'-0", or 364.12 sq. ft. The residential rooms have the following dimensions and contain the following furnishings:

No. of Rms.	Dimensions	Sq. Ft.
24	7'-6" x 11'-6"	75.9
16	7'-8" x 11'-6"	76.99
8	7'-9" x 11'-6"	77.66

window (22" x 51 1/2")
Bed (w/2 drawers)
Desk (w/3 drawers) and chair
Lamp and wall bracket
Towel rack and shelf
Book shelf
Mirror and light fixture
Washbasin and toilet

In addition, there is one shower located in each 8 room cluster, for a total of 6 showers.

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* There are two units on these floors. One unit, 11-South, is a dormitory and not involved in this motion; the present capacity of that unit is 120 beds.

** Each corridor has two windows, each measuring approximately 17" x 52".

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(ii) Multipurpose room with alcoves (42' x 38'-4", or approximately 1649.52 sq. ft.) and a separate recreation room (approximately 278.99 sq. ft.) containing:

Windows (Multipurpose Rm):
2 windows, each measuring 12'-6" x 9'-2"
  divided into 4 vertical sections and
  2 horizontal sections
1 window measuring 12'-6" x 7'-2 1/2"
  divided into 3 vertical sections and
  2 horizontal sections
Windows (Recreation Rm):
1 window measuring 22'-6" x 3'-4"
  divided into 5 vertical sections
10 tables (eating)
30 chairs
3 small round tables
5 couches
3 lounge chairs
2 color T.V.'s
3 pay telephones
2 long distance telephones*
1 two-unit mailbox (personal and attorney mail)
1 bookcase
1 pool table
1 ping pong table
1 water fountain
2 typewriters
1 jogging machine
1 exercycle
1 medicine ball
1 clothes washer and drier
1 linen closet
  janitorial closet (w/cleaning equipment)

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* Installed as of October 7, 1976.

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(iii) Education area with corridor (approximately 919.84 sq. ft.) containing:

blackboard
tack board
table
school desks

(iv) Pantry with corridor (approximately 520.76 sq. ft.) containing:

1 microwave oven and table
1 drink dispenser (double unit)
1 coffee urn (4 unit)
1 refrigerator/freezer
1 ice machine
1 condiment table (w/6 unit holder)
1 counter (w/sink and storage area)
trash barrels

(v) Visiting Room (21'-8" x 19'-1/2", or approximately 415.35 sq. ft.) with adjacent inmate search room, containting:

1 window 19' x 3'-4" divided into
5 vertical sections
1 bathroom
1 water fountain
12 chairs
2 tables
couches

Administrative and Staff Offices

Adjacent to the education areas on 11 North and 11 South are six offices used by the Unit Management Team, and for counseling; one office is set aside for use by inmates on 11 South and 11 North for legal work. In addition, there are two bathrooms (washbasin and toilet) located in this area, one in 11 North and one in 11 South.

2. The MCC Daily Population Log Summary for each day since August 2, 1975 (the day the MCC opened), setting forth the population count at the MCC, is annexed to the Taylor Affidavit.

3. At certain times since the MCC opened, some inmates have been required, for short periods of time, to sleep on cots or beds placed in corridors or commons areas in various of the residential units. Prior to February 1976, and for not more than one night, a few male inmates slept on mattresses placed in corridors or commons areas in a residential unit; further on the evening of October 13, 1976, 6 individuals slept on mattresses placed in corridors or commons areas in a residential unit on that evening.

4. On the occasions when it has been necessary to house inmates on cots or beds placed in corridors or commons areas, it has been the MCC policy to assign inmates there based upon an inmate's expected duration of commitment at MCC (inmates with the shortest expected duration) and an evaluation of the health, security or safety risks posed by an inmates' assignment to such accommodations; as soon as rooms have become vacant, inmates housed in commons areas or corridors have been reassigned to such rooms based upon length of time in such area (longest first).

5. Since March 3, 1976, the MCC policy regarding assignment of inmates to residential units has been as follows:

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Unit	Designation
Hospital (9-bed unit)	As needed
Honor Unit	Cadre and pre-release
3	Protective custody
5 South	Women
5 North	Cadre and undesignated volunteer workers
7 South	Pre-trial detainees
7 North	Pre-trial detainees
9 South	Maximum security; administrative detention; discilpinary segregation
9 North	Pre-trial detainees
11 South	Writ and other sentenced
11 North	Sentenced, parole violator and writ

6. The "cadre" consists of individuals who after conviction and sentencing, have been designated to serve their sentences at the MCC, and parole or probation violators. Members of the cadre are assigned to work at various administrative and other jobs at the MCC.

7. (a) Individuals assigned to Units 5 North (cadre and undesignated volunteer workers), 5 South (women) and the Honor Unit (cadre and pre-release) are locked in their residential rooms only when such individuals are placed under administrative detention. At all other times, individuals in these units have unrestricted access to all areas (except administrative offices) of the residential units to which they have been assigned.

(b) Individuals assigned to Units 3, 7 North, 7 South, 9 North, 9 South and 11 North are locked in their residential rooms only at the following times:

(i) 11:00 P.M. to 6:30 A.M.;

(ii) Head counts (4:00 P.M. and 7:30 P.M.)

(iii) When placed under administrative detention or disciplinary segregation.

At all other times, individuals in these units have unrestricted access to all areas (except administrative offices) of the residential units to which they have been assigned.

8. It is the MCC policy to assign and designate an inmate for confinement at a particular correctional institution within 1 or 2 days of the date on which the MCC receives the inmate's Judgment and Commitment from the sentencing court.

9. After assignment and designation of an inmate as described in paragraph 8 supra, it is the MCC policy to transport the inmate (if not assigned to and designated for the MCC) to the designated institution at the earliest possible time.

10. As of May 11, 1976 the Bureau of Prisons assigned to the MCC and commenced operating, a 22-seat bus; this bus is used by the MCC to transport individuals between the MCC and other federal correctional facilities.

11. The MCC general library contains approximately three thousand hardbacks books consisting of general reference, fiction and nonfiction titles; in addition, the library contains approximately 5,000 paperback books (fiction and nonfiction). Approximately once every three weeks, the MCC reveives 2,000 to 3,000 paperback books for distribution to inmates.

12. Books from the MCC general library are placed on carts or racks in the residential units for use by the inmates there. The selection of books on these carts are changed approximately once every three weeks.

13. Inmates may request a particular book or a book on a particular subject from the general library.

14. The definition of contraband is contained in paragraph 702 of the Custodial Manual, Policy Statement 20001.B which provides as follows:

702. CONTRABAND

1. Contraband may be best defined as any item or article inside an institution that was not issued by the institution, purchased through approved channels or approved for issue by an appropriate staff member. Authorized items may be considered contraband when found in excess quantities, or altered from original status.

2. The following items shall always be considered contraband, within any federal penal or correctional institutions:

   a. Guns and firearms of any type.

   b. Ammunition, explosives.

   c. Knives and tools not provided in accordance with this manual.

   d. Hazardous and poisonous chemicals and gases.

   e. Narcotics and drugs. These can be dispensed and in the possession of offenders only as authorized by the institution medical department.

   f. Intoxicants, such as liquor and alcoholic beverages.

   g. Curency, where prohibited.

15. Inmates at MCC are not permitted to have electric shavers or personal typewriters and are normally not permitted to received packages, including food packages or personal effects, from outside the institution except on Christmas and certain Jewish holidays.

16. The items gor sale in the MCC commissary are set forth in the commissary list annexed to the affidavit of Warden Larry Taylor.

17. In addition to the books listed in Exhibit C to the affidavit of Michael A. Young, the MCC law library contains Wright's Federal Practice and Procedure, those portions of the Bureau of Prisons Policy Statements pertaining to inmates, a copy of recent revisions of the parole regulations as set forth in the Federal Register, and the current advance sheets for the Supreme Court Reporter.

18. Current advance sheets, and when available, new hardbound volumes of the Supreme Court, Federal Second, Federal Supplement, and Criminal Law Reporters, as well as pocket supplements to Modern Federal Digest, Federal Digest, and United States Code annotated are received regularly by the MCC law library as part of its subscriptions to these reporting, digest, and annotation services. This constant updating of these materials has occurred since the opening of MCC and is done pursuant to the provisions of the Bureau of Prisons Policy Statement 2001.20.

19. Since April 1976, the following newspapers have been available for purchase by inmates in all residential units from a vendor who visits each residential unit once a day:

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New York Times
New York Daily News
El Diario
Amsterdam News

20. Inmates have access to at least one television (see paragraph 1 *supra*) from 6:30 A.M. to 11:00 P.M. except when locked into their residential rooms as described in paragraph 7 *supra*.

21. Portable radios are available for purchase from the MCC commissary by inmates.

22. Every other week, the MCC distributes, free of charge, a variety of recent news periodicals and other magazines to the residential units.

23. During a formal shakedown of an entire unit, room searches at MCC are performed out of the presence of the inmates whose rooms are being searched; during less formal searches of random rooms, the correctional officers have discretion to permit the inmates involved to stand at the doorway to their rooms to observe the search.

24. No receipts are given for contraband seized and confiscated as the result of room searches. However, where the contraband is of a serious enough nature to warrant disciplinary action (*i.e.* other than nuisance contraband), an incident report is filled out by a correctional officer, and a copy is given to the inmate.

25. On October 14, 1976 the MCC mail room received 508 letters to inmates of which 382 were personal letters.

Dated: New York, New York
October 18, 1976

ROBERT B. FISKE, JR.
United States Attorney
Attorney for the Respondents

By:
FREDERICK P. SCHAFFER
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES ex rel. WOLFISH, et al.,

Relators, :

v. :

EDWARD LEVI, et al., :

Respondents. :

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U.S. DISTRICT COURT
S.D. of NEW YORK

AFFIDAVIT

75 Civ. 6000 (MEF)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

LARRY TAYLOR, being duly sworn, deposes and says:

1. I am the Warden at the Metropolitan Correctional Center ("MCC") and as such I am a respondent in this action. I am familiar with the matters set forth herein and I submit this affidavit in opposition to relators' motion for partial summary judgment and in support of respondents' cross-motion for summary judgment.

Double-Bunking and Overcrowding

2. As set forth in my previous affidavit of December 10, 1975, paragraphs 2 through 7, which was submitted in this action, the MCC has placed double-bunks in some of the residential rooms of the MCC to accommodate an expected rise in the inmate population. The number of double-bunked rooms (excluding the dormitory which has 60 double-bunks or 120 beds) is set forth in paragraph 1 of respondents' Rule 9(g) statement.

3. In addition to installing those double-bunks to meet the expected rise in population, the MCC has taken certain measures in an attempt to reduce the population at the MCC (See Return to the Amended Petition, dated February 13, 1976, paragraph 7.) Since approximately

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May 11, 1976, Bureau of Prisons' buses transporting individuals between Bureau correctional facilities have been rerouted and diverted from the MCC in order to minimize the instances when the MCC is required to house, either over night or for a few days, such individuals who are in transit. Whereas, previously the Bureau bus was stopping at the MCC approximately twice a week, it now comes to the MCC once per month, except in an emergency situation. At the same time, the Bureau of Prisons assigned a 22-seat bus to the MCC for our use in transporting individuals between the MCC and other Bureau correctional facilities.* The regular schedule for this bus is annexed hereto and made a part hereof as Exhibit "1". In addition, we have now been authorized to make an additional run on either Thursdays or Fridays when needed. The MCC also has a 9-seat van which is used to transport inmates.

4. Individuals going to areas outside of the MCC regular bus route are transported from the MCC through the Prisoner Coordination Unit in the U. S. Marshal's office. The MCC is working with the U. S. Marshal's office to maximize efforts to move prisoners from the MCC as soon as possible after they have been designated to another federal institution, or the writ bringing them to the MCC has been satisfied.

5. It is the MCC policy to assign and designate an inmate for confinement at a particular correctional institution within 1 or 2 days after the MCC receives the

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* A new bus to replace the present one is expected to arrive for use beginning in approximately December; this replacement has a capacity of 32 seats.

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inmate's Judgment and Commitment from the sentencing court; the inmate is then transferred from the MCC to the designated facility at the earliest possible time. As part of our effort to speed-up the designations and transfers / from the MCC, we have reorganized the Receiving and Discharge Section at the MCC, added a full-time supervisor for that unit and a full-time case management coordinator for faster and more efficient processing and designation.

6. We have also increased the number of our referrals of short term offenders to community treatment centers and the Federal Prison Camp at Allenwood, Pennsylvania which has recently increased its capacity. We have attempted to increase our contracts with detention facilities in the surrounding areas to house individuals in federal custody but because of increased populations in those institutions we have been unsuccessful.

7. Although these efforts have not been completely successful in permanently reducing the population at the MCC, they have helped to keep the average population well below 600. See MCC Daily Population Log Summary for each day since August 2, 1975 (the day the MCC opened) setting forth the population count at the MCC which is annexed hereto as Exhibit "2". Indeed, although we can not accurately predict what our population may increase to, up to this time we have avoided reaching a population count of 620 which was projected last December (Taylor Affidavit, dated December 10, 1975, ¶ 3.)

8. The above-described procedures have also helped us to minimize the number of occasions when it has been necessary to even temporarily confine inmates in common areas. When such an emergency situation occurs, the

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MCC policy is to first fill all available beds (except in the women's unit and the protective custody unit) and then assign individuals to cots placed in the commons areas; as soon as rooms become vacant, inmates housed in the commons areas are reassigned to such rooms. Particularly within the last four months, on the few occasions when it has been necessary to house individuals in commons areas, that situation has lasted for only approximately 1 or 2 nights. Moreover, except for the evening of October 13, 1976 when six individuals were assigned to mattresses (rather than cots) that situation had not occurred since approximately February 1976. Indeed, the need to resort to such accommodations on October 13, 1976 was due to a rapid increase in the population which we were unable to move out of the MCC because the MCC bus had broken down. That situation lasted for that night only, and thereafter we were able to rapidly reduce the population by having special runs on Friday, October 15, and Saturday, October 16, as well as the regularly scheduled run on Monday, October 18, 1976.

Publisher Only Rule and Possession of Personal Property

9. The introduction into the MCC of packages from outside the institution creates serious problems of security and administrative manageability. A careful visual, tactile and perhaps chemical or taste analysis of each package sent to the institution would be necessary in order to prevent the introduction of contraband such as drugs, alcohol, weapons and money, all of which pose a serious threat to the security and good order of the MCC. For some packages, such as hard cover books, it may very well

be necessary to damage the package (remove the cover) to make a proper and thorough search; in the case of all books and magazines, it would be necessary to leaf through every page in order to insure that money and other contraband were not inserted between the pages. This search process would take a substantial and inordinate amount of available staff time. Moreover, in the case of food packages, a serious health hazard would be created due to possible spoilage and by attracting insects and vermin. Finally, the maintenance of order and discipline within the MCC demand[illegible] on the possible inequalities between inmate [illegible] terms of the value and amount of personal property they may possess in the MCC so as to avoid jealousies, thefts and fights relating to personal property.

10. Because of these problems, the MCC has adopted the rule whereby an inmate may receive reading material from outside the institution only if it comes directly from the publisher or a book club. In our view, there is relatively little risk that material received directly from a publisher or book club would contain contraband, and therefore, the security problems are significantly reduced without a drastic drain on staff resources. In order to provide inmates with alternate sources of reading material, the MCC maintains a general library, sells newspapers and distributes magazines as more specifically described in the accompanying affidavit of Robert Harris, Education Specialist at the MCC.

11. Further, the MCC prohibits receipt of other types of packages from outside the institution, with the exception of special food packages at Christmas and certain Jewish holidays;* as noted above, this limitation is necessary in light of the problems discussed in paragraph 9 above. Inmates are, however, permitted to purchase a wide variety of personal and prepackaged food items and fruit from the MCC commissary. A copy of the current MCC commissary list is annexed hereto as Exhibit "3". A limit of $15.00 per week, or a total of $45.00 per month, has been placed on purchases by inmates from the commissary (with the exceptions noted on Exhibit "3") in order to minimize the risk of thefts, fights and tension as stated above.

Access to the Law Library

12. In addition to space limits in the law library, it would require a substantial amount of additional staff time to escort inmates to the law library and also supervise them during the time that they are conducting legal research. Because of these problems, it has been necessary for the MCC to adopt a system whereby inmates request books from the law library and the books are thereafter brought to them. We believe that this system provides inmates with reasonable access to legal materials.

Room Searches and Contraband

13. During a formal unit shakedown, when a particular portion of a residential unit is cleared of inmates and a search conducted, the MCC does not permit an inmate to watch a search of his room; during the less formal

* For The Jewish Holidays, the food packages are brought in through the [illegible] [illegible] [illegible]

searches which are conducted more often, it is also not advisable to have inmates present during searches, although on these less formal shakedowns correctional officers have the discretion to permit the inmate to stand at the doorway to his room to observe the search. These rules on searches are necessary for the following security reasons: (a) to be effective, searches must be carried out at random times, when inmates may not be in their residential units; (b) to permit inmates to be present would enable them to discover where particular correctional officers most often conduct their searches; (c) inmates' presence pose the risk of violent confrontation between inmates and correctional officers when the inmate is seeking to conceal contraband; (d) an inmate's presence would also enable him to move contraband while the officer is conducting the search.

14. When contraband is found of a sufficiently serious nature to warrant disciplinary proceedings (e.g., hazardous contraband, or items of more than nominal value) the inmate receives a written incident report which describes the contraband which has been seized. Much of the contraband that is seized is either institution property not authorized for possession by the inmate, or institution property which, although authorized for inmate use, has been altered; money which is seized is paid into the United States Treasury. In instances where nuisance contraband is seized, and does not result in any disciplinary proceeding, the inspecting officer may give the inmate oral notification of what was seized.

LGC:n

Inmate Mail

15. The MCC adheres to Bureau of Prison Policy Statement 7300.1A regarding processing of inmate mail. As set forth in paragraph 6b therein, the MCC scans, on a random basis, incoming and outgoing personal mail. This rule is essential to the furtherance of two important interests of the institution unrelated to suppression of expression. First, spot-checking of such mail is necessary to discourage and prevent escape attempts. Although telephone calls and personal visits are not similarly monitored, the possible use of the mails for more detailed communication of escape plans, including maps or diagrams, justifies closer attention to letters than to oral communication. Second, spot-checking letters to and from sentenced inmates can be extremely helpful in alerting the staff to problems facing such inmates or to other matters which may help in evaluating their progress or institutional adjustment, thereby assisting the goal of rehabilitation.

16. The inspection of outgoing personal mail is necessary in order to prevent the sending of money and other contraband, including escape plans, diagrams, key molds, from the MCC. It is particularly important that this inspection be carried on as a regular procedure in order to insure that illicit activities, of which the staff may have no prior knowledge, may effectively be ended at the earliest possible time.

WHEREFORE, it is respectfully requested that relators' motion for partial summary judgment be denied, and respondents' motion for partial summary judgment be granted.

LARRY TAYLOR
Warden, MCC

Sworn before me this
the 19th of October, 1976
Rita Soler

"AUTHORIZED BY THE ACT OF JULY 7, 1[illegible]
TO ADMINISTER OATHS (18 U.S.C. 4004)".

A 96

5/13/76

BUS SCHEDULE

	Lewisburg		M.C.C., New York	
1st week	Tues	LW - PET	Mon	NY - LEW
	Wed	PET - ATL	Tues	LEW - NY
	Thur	ATL - PET	Wed	NY - DAN - NY
	Fri	PET - LEW		
2nd week	Wed	LEW - PET	Mon	NY - LEW
	Thur	PET - NY	Tues	LEW - NY
	Fri	NY - LEW	Wed	NY - DAN - NY
3rd week	Tues	LEW - PET	Mon	NY - LEW
	Wed	PET - ATL	Tues	LEW - NY
	Thur	ATL - PET	Wed	NY - DAN - NY
	Fri	PET - LEW		
4th week	Tues	LEW - MILAN	Mon	NY - LEW
	Wed	MILAN - TH	Tues	LEW - NY
	Thur	TH - D.C.	Wed	NY - PET
	Fri	D.C. - LEW	Thur	PET - NY

PET - Federal Correctional Institution, Petersburg, Virginia
ATL - United States Penitentiary, Atlanta, Georgia
LEW - United States Penitentiary, Lewisburg, Pennsylvania
NY - Metropolitan Correctional Center, New York, New York
MILAN - Federal Correctional Institution, Milan, Michigan
TH - United States Penitentiary, Terre Haute, Indiana
DAN - Federal Correctional Institution, Danbury, Connecticut
D.C. - Washington, D.C.

EXHIBIT 2

Because of its volume, Exhibit 2 is not attached hereto, but is being submitted separately.

A 98

METROPOLITAN CORRECTION CENTER

150 PARK ROW
NEW UORK NEW YORK

NAME ______________________ INMATE NUMBER ______________________

UNIT NUMBER ______________________ ROMM LETTER ______ ROOM NUMBER __________

AMOUNT OF PURCHASE ______________________ BALANCE AFTER SALE ______________________

QUANTITY	ITEM	PRICE
	B & H DELUXE	.45
	PKS B & H 100'S	.35
	PKS PALL MALL	.35
	PKS MARLBORO	.30
	PKS SINSTON	.30
	PKS WINSTON 100'S	.35
	PKS VICEROY	.30
	PKS KENTS	.30
	PKS SALEM	.30
	PKS KOOLS	.30
	PKS APPLE TOBACCO	.45
	PKS CHERRY TOBACCO	.45
	PKS MIXTURE #79	.45
	PKS PIPE FILTERS	.10
	PKS PIPE CLEANERS	.25
	EA CORN COB PIPE	.45
	EA GARCIA BEGA REGALOS	.20
	EA BARCIA VEGA GALANT	.20
	EA PALMA THROWOUTS	.15
	EA POUND CAKES	1.05
	EAH COFFEE CAKES	1.05
	EA FIG NEWTOWNS	.80
	EA LORNA DOONES	.65XXXX
	EA MAYFAIR ASST.	.80
	EA CHIP AHOY	.90
	EA CHEESE NIPS	.65
	EA RITZ CRACKERS	.75
	EA GINGER SNAPS	.85
	EA POTATO CHIPS	.45
	EA PRETZELS	.50
	EA FRITO CORN CHIPS	.45
	EA CHEETOS	.55
	EA COCKTAIL NUTS	.65
	EA MIXED NUTS	.85
	EA CASHEW NUTS	1.15
	EA CHERRY PEPPERS	.60
	EA SLIM JIMS	.20
	EA #MUSKETEERS	.15
	EA SNICKERS	.15
	EA HERSHEY ALMONDS	.15
	EA MR. GOODBAR	.15
	EA LIFESAVERS	.15
	EA PENNY CANDY	.01
	EA VICTORS COUGH DROPS	.20
	EA BIC PENS	.20
	EA PLASTIC PITCHERS	.70
	EA " MUGS WITH HANDLE	.30
	EA " GLASS TUMBLER	.30
	EA APPLE PIES	.20
	EA CHERRY PIES	.20

QUANTITY	ITEM	PRICE
	EA TANG - ORANGE	2.20
	EA GRAPEFRUIT	1.20
	EA SHASTA	.20
	A - CREME	
	B - ROOT BEER	
	C - BLACK CHERRY	
	D - GRAPE	
	E - GINGER ALE	
	F - COLA	
	EA MAXWELL HOUSE INST	2.30
	EA NESTLE CREAMER	.95
	EA TASTERS CHOICE	3.45
	EA INSTANT HOT CHOCOLATE	.10
	EA DOMINO SUGAR CUBE	1.20
	TETLEY TEA	1.35
	EA PROTEIN 29 SET	1.05
	EA PROTEIN 21 SHAMPOO	.95XXXX
	EA PRELL SHAMPOO	.80
	EA HEAD & SHOULDERS	.80
	EA ADORN	1.35
	EA TAME	1.35
	EA DIPPIDY DOO	1.20
	EA ULTRA SHEEN	2.30
	EA DIXIE PEACH - LGE	.80
	EA DIXIE PEACH - SMALL	.55
	EA BOBBY PINS	.30
	EA COMB & BRUSH SET	1.10
	EA AFRO COMB	.55
	EA BARBER COMB	.30
	EA AFRO PICK	.75
	EA CURLER COMB	.40
	EA FINGER NAIL CLIPPER	.30
	EA TOE NAIL CLIPPER	.30
	EA TWEEZERS	.50
	EA SEWING KIT	.80
	EA HAIR ROLLERS-FOAM	.70
	EA HAIR ROLLERS-PLASTIC	.40
	EA LAVORIS MOUTHWASH	.80
	EA CLOSEUP TOOTHPASTE	1.05
	EA POLIGRIP	1.05
	EA POLIDENT	1.15
	EA MESSANGELL DOUCHE	1.05
	EA TAMPAX 40'S	1.80
	A - REGULAR B - SUPER	
	EA FEMININE SYRINGE	3.05
	EA EMORY BOARDS	.30
	EA DENTAL FLOSS	.60
	EA NOXEMA SKIN CREAM	1.20
	EA ARTRA SKIN TONE	1.30
	EA MENNEN'S BABY POWDER	.80
	EA MENNEN'S BABY OIL	.75
	EA MENNEN'S BATH TALC	1.00
	EA AMMENS POWDER	1.00
	EA QUINSANA FOOT POWDER	1.00
	EA JERGEN'S LOTION	1.40
	EA CHAP STICK	.45
	EA AFRO SHEEN HAND-BODY LOTION	1.00

`*********************PLEASE CIRCLE ITEMS YOU WISH TO RECEIVE*********************`

EA GILLETTE TRAC 2 SET	3.50
EA GILLETTE TRAC 2 BLDG	1.30
EA GILLETTE DBL EDGE SET	1.25
EA GILLETTE DBL EDGE BLD	.85
EA MAGIC SHAVE - BLUE	.70
EA MAGIC SHAVE - RED	.70
EA MAGIC SHAVE - GOLD	.85
EA SHAVING BRUSH	1.20
EA STYPTIC STICK	.25
EA AFTA SHAVE	.95
EA Q TIPS	.50
EA GRIFFIN SHOE POLISH	.25
A - BLACK B - BROWN	
EA EYEBROW PENCILS - BLACK	.55
EA EYE SHADOW	.90
A SAPPHIRE BLUE	
B - PERL WHITE	
EA MASCARA	.80
A - BROWN	
B - BLACK	
EA EYEBROW LINER	1.00
A-BLK B-DK BRN C- LRN	
EA ANGEL FACE COMPACT	.85
A-RACHAEL B-[illegible] IVORY	
C-SUN TAN D-TAWNY E-TROPIC SUN	
EA APPLES	15
EA ORANGES	.15
EA GRAPEFRUITS	.25
EA NICKELS ($2.00 MINIMUM)	2.00
[illegible]XXXX$XXXXXXXXXXXXXXXXXXXX	

WATCHES

EA WOMEN'S	A	8.05
EA WOMEN'S	B	10.20
EA [illegible]	A	8.85
EA [illegible]	B	10.90

BATTERIES

EA SIZE AA	.25
EA SIZE C	.30
EA SIZE D	.30
EA SIZE 9V	.30

EA SOAP DISH	.30
EA [illegible]	.35
[illegible]NG	.45
EA [illegible] STICK	.55
EA [illegible]	.55
EA SECRET ROLL ON	1.20
EA SHOWER SHOES	165
A-SML B-MED C-LGE	
EA ATHLETIC SUPPORTERS	2.20
A-SML B-MED C-LGE	
EA GYM SHORTS	2.95

EA

EA COMPOSITION NOTE BOOK	.75
EA RADIO	25.90

LIMITS ON THE FOLLOWING ITEMS
(1) FRUITS - 10
(2) PENNY CANDIES 25
(3) CANDY - x2 10

YOU ARE PERMITTED TO SPEND $15.00 A WEEK NOT TO EXCEED $45.00 PER MONTH

THE FOLLOWING ITEMS ARE NOT INCLUDED IN $45.00 MONTHLY LIMITATION
(1) RADIOS
(2) B TYPE WATCH
(3) GYM SHORTS
(4) SNEAKERS

ALL NONCASH ITEMS ARE POSTED ONE DAY AFTER YOU RECEIVE YOUR PINK RECEIPT FROM THE MAILROOM

ALL NONCASH ITEMS EXCEPT POSTAL MONEY ORDERS ARE SUBJECT TO 30 DAY CLEARANCE.

NAME ____________________

[illegible]XXXXXXX[illegible]

INMATE NUMBER ____________________

SECTION ____________________

ROOM ____________________

TO INSURE THAT YOU RECEIVE THE PROPER ITEMS CIRCLE THE ITEMS THAT YOU WISH TO RECEIVE.

SNEAKERS 18.00

SIZES _ 8½ 9 9½ 10 10½
11 11½ 12 13

SWEAT SUIT 12.90

A-SML B-MED XXXXX TEMP OUT

**********************PLEASE CIRCLE ITEMS YOU WISH TO RECEIVE**********************

FS:n

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
10-20-76
S.D. OF N.Y.

UNITED STATES OF AMERICA ex rel.
LOUIS WOLFISH, et al.,

Relators,

v.

EDWARD LEVI, et al.,

Respondents.

AFFIDAVIT

75 Civ. 6000 (MEF)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ARTHUR CASSIDY, being duly sworn, deposes and says:

1. I am a correctional officer at the Metropolitan Correctional Center, and for the past three months, I have been in charge of the mail room. As such I am familiar with the matters set forth herein.

2. I submit this affidavit in opposition to relators' motion for partial summary judgment and in support of respondents' motion for summary judgment with respect to the inspection of personal mail out of the presence of the inmates.

3. On October 14, 1976, at the request of Assistant United States Attorney Frederick P. Schaffer, I conducted a count of the letters received in the mail room for distribution to inmates. On that date, there were 508 such letters, of which 382 were personal letters, 42 were from lawyers, and 84 were from the courts and governmental agencies.

4. In my experience working in the mail room, the number and distribution of the incoming letters set forth in paragraph 3 above is representative of the usual

daily flow of mail into the institution for delivery to inmates.

5. At present incoming letters from lawyers and from the courts and agencies of the United States Government, and clearly identified as such, are taken to the units unopened and are inspected there by the unit managers in the presence of the inmates to whom they are addressed. Personal mail is opened and inspected in the mail room out of the presence of the inmates.

6. It is my opinion that if the inspection of personal mail was also required to be done in the presence of the inmates, it would place a significant administrative burden on the correctional staff in the units and might well cause a delay in the delivery of the mail to the inmates.

WHEREFORE, it is respectfully requested that this Court deny relators' motion for partial summary judgment and grant respondents' motion for partial summary judgment with respect to the inspection of personal mail out of the presence of the inmates.

ARTHUR CASSIDY

Sworn to before me this

19th day of October 1976.

Notary Public

AUTHORIZED BY THE ACT OF JULY 7, [illegible]
TO ADMINISTER OATHS ([illegible] U.S.C. [illegible])

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA ex rel. :
LOUIS WOLFISH, et al., :

Relators, : **AFFIDAVIT**

v. : 75 Civ. 6000 (MEF)

EDWARD LEVI, et al., :

Respondents. :

- - - - - - - - - - - - - - - - - - - -x

U.S. DISTRICT COURT
S.D. of NEW YORK
10-20-76

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT HARRIS, being duly sworn, deposes and says:

1. I am the Education Specialist at the Metropolitan Correctional Center. As such I am responsible for the general library, the law library, and the distribution of newspapers and magazines.

2. I submit this affidavit in opposition to relators' motion for partial summary judgment and in support of respondents' motion for partial summary judgment relating to the enforcement of the "publisher only" rule, the adequacy of the law library, and the availability of news sources.

3. The general library consists of more than 3,000 hardcover books, including general reference texts, fiction, and nonfiction, as well as more than 5,000 assorted paperbacks, including fiction and nonfiction. Inmates have access to these books through specific requests to the library (for a particular book or type of book) and by means of a general circulation of paperbacks in racks and carts placed in the residential units; the selection of

titles in each of the units is changed approximately once a month.

4. In addition to the list of books set forth in Exhibit "C" to the affidavit of Michael G. Young, the law library contains Wright's Federal Practice and Procedure, those portions of the Bureau of Prisons Policy Statements relating to inmates, recent amendments to the parole regulations copied from the Federal Register, and the advance sheets for the Supreme Court Reporter. The advance sheets for the Supreme Court, Federal Second, Federal Supplement, and Criminal Law Reporters, as well as the pocket supplements to Modern Federal Practice Digest, Federal Digest, and United States Code Annotated, are received regularly as part of the institution's subscription to those reporting, digest and annotation services. At no time since the opening of the Metropolitan Correctional Center has the law library failed to keep these volumes current.

5. Since April 1976, the following newspapers have been available for sale to inmates: The New York Times, the New York Daily News, El Diario, and the Amsterdam News. The cost per week if the MCC were to provide these newspapers for free, based on the current average number of sales, would be approximately $78.59. However, it is anticipated that if distribution of these newspapers was to be free, the inmate demand would be greatly increased. In addition, every other week I have distributed to each of the residential units a wide variety of recent news periodicals and magazines which we receive from the General Post Office in New York City.

WHEREFORE, it is respectfully requested that this Court deny relators' motion for partial summary judgment and grant respondents' motion for partial summary judgment with respect to the enforcement of the "publisher only" rule, the adequacy of the law library, and the availability of news sources.

ROBERT HARRIS

Sworn to before me this

19th day of October 1976.

Notary Public

"AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 4004)".

:ais

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED 10-20-76
S.D. OF NEW YORK

UNITED STATES ex rel
LOUIS WOLFISH, et al.,

Relators,

-v-

EDWARD LEVI, et al.,

Respondents.

AFFIDAVIT

75 Civ. 6000

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

DAVID HIRSCH, being duly sworn, deposes and says:

1. I am a professional photographer, and at the request of the United States Attorney's Office for the Southern District of New York, on or about October 12, 1976 I took, developed and mounted a series of color transparencies (slides) of portions of the Metropolitan Correctional Center, 150 Park Row, New York, New York ("MCC").

2. Submitted herewith under separate cover are sixteen of the color transparencies which I took, developed and mounted of the residential units at the MCC.

3. These 16 transparencies were taken of the following locations within the MCC:

Transparency	Location
Row 1, #3	Honor Unit (Double-bunked Room)
Row 1, #7	Honor Unit (Double-bunked Room)
Row 1, #10	Protective Custody (Double-bunked Room)
Row 1, #14	5-South (Multipurpose Room)
Row 2, #19	5-South (Room cluster and stairway to Education Area)

Transparency	Location
Row 2, #23	5-South (Room Cluster)
Row 2, #28	5-South (Recreation Room)
Row 2, #31	5-South (Residential Room)
Row 3, #34	5-South (Education Area)
Row 4, #7	5-South (Multipurpose Room)
Row 4, #9	5-North (Residential Room)
Row 4, #18	5-North (Residential Room)
Row 5, #22	5-North (Pantry)
Row 5, #26	5-North (Room Cluster)
Row 5, #30	5-North (Multipurpose Room)
Row 5, #36	7-North (Double-bunked Room)

DAVID HIRSCH

Sworn to before me this

18th day of October, 1976.

Patrick H. Barth
Notary Public

PATRICK H. BARTH
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-457[illegible]7
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1978

LCC:ais

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED 10.20.76
S.D. OF NEW YORK

UNITED STATES ex rel
LOUIS WOLFISH, et al.,

Relators,

-v-

EDWARD LEVI, et al.,

Respondents.

AFFIDAVIT

75 Civ. 6000 (MEF)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

MARSHALL HAIMES, being duly sworn, deposes and says:

1. I am employed by the United States Bureau of Prisons as a Research Analyst at the Metropolitan Correctional Center ("MCC"); as such I am familiar with the matters set forth herein.

2. At the request of the United States Attorney's Office for the Southern District of New York, available information from official records of the MCC was compiled under my direction and supervision concerning the length of confinement of individuals confined at the MCC. This information was collected from Commitment Summary Sheets (BP Form 31 Revised) for individuals admitted to and subsequently discharged from the MCC during the period of approximately August 2, 1975 to October 13, 1976.

3. The results of that compilation are set forth in Exhibit A which is annexed hereto and made a part hereof. This data is from a sample of 1443 individuals who were admitted to and discharged from the MCC during the period described in paragraph 2 above. The 1443

individuals were selected, and the data collected, by choosing every fourth Commitment Summary Sheet from the file maintained at the MCC of individuals committed to and discharged from the MCC; this file is maintained in alphabetical order.

Marshall C. Haimes
MARSHALL HAIMES
Research Analyst

Sworn to before me this
(RLL) 14th
~~18th~~ day of October, 1976.

Ralph L. Lee
Notary Public

RALPH L. LEE
Notary Public, State of New York
No. 41-22[illegible]838 Queens County
Term Expires March 30, 1977

Page 1 of 2 Pages

LENGTH OF CONFINEMENT
METROPOLITAN CORRECTIONAL CENTER
NEW YORK CITY
2-17-76

Days of Confmt @ M.C.C.	Study	Escape	Desgtd	Contmpt of Ct	P/S*	Pre Snted	Snted	Ent	Immign	Prob Par Viol	Safekpr	Fed Writ	St Writ	Wkndr	N	%
[illegible]	19	7	2	3	78	90	95	211	13	20	214	18	30		800	55.4
[illegible]	6	3	4		42	39	36	15	7	7		26	23	1	209	14.5
[illegible]	5	2	2		16	15	20	5		6		7	16	1	95	6.6
[illegible]	3			1	10	10	7	3	1	6		17	5	2	65	4.5
[illegible]	4		1	1	9	1	3		1	7		4	9		40	2.9
[illegible]	1		2		16	5	10	3		3		3	5	4	52	3.6
[illegible]			1		10		2		1			3	9		26	1.8
[illegible]	2		1		5	2	4		1	2		4	2	1	24	1.7
[illegible]	2	1	2	1	6	2	3		1	2		5	2		27	1.9
[illegible]		1			7	1	1			1		2	1		14	0.97
[illegible]	1				6	2						1			10	0.69
[illegible]			1		2		1					1	1		6	0.42
[illegible]					5	1									6	0.42
[illegible]			2	1	7		1					3			14	0.97
[illegible]			2		5	2			1			2			12	0.83
[illegible]	1											2	3		6	0.42
[illegible]					5							1			6	0.42
[illegible]					2	1				2		1			6	0.42
[illegible]					1				1	1		3			6	0.42
[illegible]				1	1										2	0.14
[illegible]						1				1					2	0.14
[illegible]					1		1					1			3	0.21
[illegible]																
[illegible]																
[illegible]																
[illegible]			2		1							1			4	0.28
[illegible]			1			1									2	0.14
[illegible]							1								1	.07
[illegible]					1										1	.07
[illegible]																
[illegible]																
[illegible]													1		1	.07
[illegible]																
[illegible]			1												1	.07
[illegible]																
[illegible]			1												1	.07
[illegible]																
[illegible]																
[illegible]																
[illegible]																
[illegible]																
[illegible]																
[illegible]									1						1	.07
GRAND TOTAL	44	14	25	8	236	173	185	237	28	58	214	105	107	9	1,443	

*Classification changes from Pre-Sentence to Post Sentence during period of Confinement at Metropolitan Correctional Center.

6/14/76

LENGTH OF CONFINEMENT - N.Y. M.C.C.
CENTRAL TENDENCIES

	No. of Inmates	Total Man Days	Mean	Median	Mode	Range
P/S	236	10,862	46.02	19.00	7	1-290
Presentence	173	3,880	22.43	10.15	4	3-266
Sentenced	185	4,048	21.88	9.56	8	1-277
Enroute	237	1,403	5.92	5.40	1	1-135
Immigration	28	1,222	43.64	13.0	1	1-426
State Writ	107	3,602	33.66	20.25	5	1-316
Fed Writ	105	5,136	49.87	32.25	33	1-257
Contempt	8	515	64.30	42.0	2	1-196
Escape	14	306	21.86	10.0	2	2-92
Study	44	1,251	28.43	14.5	7	2-156
Designated	25	2,750	110.00	79.0		9-354
Safekeeper	214	238	1.11	1.19	1	1-2
Prov./Par Viol	58	2,189	37.73	25.75		1-205
Weekender	9	408	45.33	59.62	60	16-80
TOTALS	1,443	37,810	26.20	24.41 Average Median		

A 110

slk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA ex rel
LOUIS WOLFISH,

Relator,

against

Civ. 600

UNITED STATES OF AMERICA, et al.,

Respondents.

--------------------------------------x

November 15, 1976
4:30 p.m.

BEFORE:

HONORABLE MARVIN E. FRANKEL

APPEARANCES:

LEGAL AID SOCIETY
BY: MICHAEL YOUNG, ESQ.
MICHAEL MUSHLIN, ESQ.
PHYLLIS BAMBERGER, ESQ., of Counsel

ROBERT B. FISKE, JR., ESQ.,
United States Attorney for the Southern District of New York
BY: LOUIS CORSI, ESQ.,
FREDERICK P. SCHAFFER, ESQ., of Counsel

bslk

THE COURT: I don't know whether to let you just run ahead or to ask you some questions.

Let me start by saying a couple of things about where I am with respect to the papers.

I will quote 8 numbered items that are listed here.

As to number one, double celling, I think it is a waste of time to hear you orally. I think I am going to take evidence on that. I am going to allow you to present experts on how many cubic feet we need to breath in and so on. I don't think it is a summary judgment question.

I am going to have to look at the facility for the particular purpose of considering that question in light of the precedence.

The same applies to number two, confining persons in non-residential areas.

As to three, reading the things that have been cited to us, and the papers on this motion, I am about, I would say, 87% of the way toward granting summary judgment in favor of the relators, as they insist on calling themselves. So why don't we start with that, Mr. Schaffer. Why shouldn't I grant summary judgment outlawing that publisher's only rule.

MR. SCHAFFER: Your Honor, we believe that the

THE LEGAL AID SOCIETY
Criminal Appeals Bureau
Federal Defender Services Unit
United States Court House
Foley Square — Room 509
New York, N. Y. 10007
(212) 732-2971

PHYLIS SKLOOT BAMBERGER, Attorney-in-Charge

HAROLD H. HEALY, JR
Chairman of the Board
ROBERT B. MCKAY
President

ARCHIBALD R. MURRAY
Executive Director
& Attorney-in-Chief

WILLIAM E. HELLERSTEIN
Attorney-in-Charge
Criminal Appeals Bureau

December 20, 1976

The Honorable Marvin E. Frankel
United States District Judge
United States District Court
Southern District of New York
2002 United States Court House
Foley Square
New York, New York 10007

Re: WOLFISH v. LEVI, 75 Civ. 6000

Your Honor:

I have just been advised by your law clerk that you are contemplating taking a tour of the Metropolitan Correctional Center at 4:00 p.m. on December 22, 1976. I am writing to advise you that petitioners object to the scheduling of a tour of MCC at that time.

The purpose of such a tour is to enable Your Honor to witness the institution during a period of normal operating conditions. Two days prior to Christmas, conditions at MCC will be far from normal. The inmate population will likely be reduced by holiday furloughs, the reluctance of many judges to order a defendant to surrender himself to commence serving his sentence during the holidays, and the reduced number of "in-transit" inmates at MCC because of the reduced number of transfers occurring during the holiday season. This reduction in population will in turn reduce the number of persons visible in the units, overcrowding of the visiting areas, noise levels in the various units, overtaxing of the telephone systems, the inadequacy of the staff, and other issues that are central to this litigation. Moreover, respondents have admitted that the holiday season is the only time

The purpose of the Society is to render legal aid in the City of New York to persons who are without adequate means to employ other counsel.—By-laws of The Legal Aid Society.

during the year when they take certain steps, such as allowing inmates to receive packages from family and friends, which tend to render conditions at the institution temporarily more humane.

Finally, visiting patterns will likely be affected, with visiting probably reduced, on the day of Your Honor's intended visit. Certain potential visitors will be deterred from visiting on that day by the need to complete last-minute shopping and other arrangements for home celebrations; other visitors will refrain from visiting on the date in question in order to save their limited number of allowed visits for the holiday period itself.

Because of these and other abnormal conditions induced by the holiday period, petitioners respectfully request that Your Honor re-schedule your tour for some time in January, when conditions will in all likelihood be more representative of the normal situation at MCC. Secondly, we request that, when that tour is scheduled, it commence earlier in the day than 4:00 p.m., since the bulk of visiting -- a major issue in this case -- occurs between 12:30 and 3:30 p.m. Finally, we request that such a tour be unannounced, if possible, because of the understandable desire of the respondents to improve appearances for a tour about which they are advised in advance.

One of petitioners' principal contentions in this case is that MCC was designed as a showplace, impressive to the tourist but lacking in consideration of many of the basic needs of the inmates. The added tinsel and other abnormalities of the holiday season at MCC will tend only to obscure further the oppressive nature of the conditions petitioners challenge in this proceeding.

The Honorable Marvin E. Frankel
United States District Judge
United States District Court
Southern District of New York
2002 United States Court House
Foley Square
New York, New York 10007

Re: WOLFISH v. LEVI, 75 Civ. 6000

December 20, 1976

We appreciate Your Honor's initiative in requesting a tour of MCC. However, the brief postponement we request should not delay resolution of any of the issues in this case. Rather, it will satisfy the interests of both parties in having Your Honor observe conditions at the institution as they normally exist.

Thank you for your consideration of this letter.

Respectfully submitted,

MICHAEL YOUNG
Attorney for Petitioners

MYbc

cc: Louis G. Corsi, Esq.
Assistant U.S. Attorney
Southern District of New York

FPS:hbc

75-3973

December 28, 1976

BY HAND

Honorable Marvin E. Frankel
United States District Judge
United States Courthouse
Foley Square
New York, New York

Re: United States v. ex. rel. Wolfish
Levi, 75 Civ. 6000 (MEF)

Dear Judge Frankel:

We are enclosing herewith an affidavit from Warden Taylor dated December 28, 1976 in response to the Court's inquiries and request during the tour on Wednesday afternoon December 22, 1976.

In addition, we are also submitting an affidavit from Walter Menninger, M.D., setting forth his opinion concerning the effect on inmates of double-bunking at the MCC. Until a day or two before the tour on December 22, the respondents believed that the Court did not intend to rule on petitioners' motion for summary judgment on the issue (among others) of double-bunking and, as respondents urged in their papers, would reserve that issue for trial when a full record, with fact and expert testimony, could be developed. (Hearing on November 15, 1976, p.2 of the transcript). In view ofthe fact that the Court formally advised the parties on December 22 that it was ready to rule by way of summary judgment on the double-bunking issue, we believe it necessary and appropriate to submit Dr. Menninger's affidavit as part of the record.

Respectfully submitted,
ROBERT B. FISKE, Jr.,
United States Attorney

By:_____________________
FREDERICK P. SCHAFFER
Assistant United States Attorney
791-1967

cc:Michael Young, Esq.
Legal Aid Society
Room 509,U.S.Courthouse
Foley Square,New York,N.Y.

Filed in chambers 12/27/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES *ex rel.* WOLFISH, *et al.*,

Relators,

v.

EDWARD LEVI, ET AL.,

Respondents.

AFFIDAVIT

75 Civ. 6000 (MEF)

STATE OF KANSAS)
COUNTY OF SHAWNEE : ss.:

WILLIAM WALTER MENNINGER, M. . , being duly sworn, desposes and says:

1. I am a physician practicing the specialty of psychiatry, certified by the American Board of Psychiatry and Neurology. A copy of my curriculum vitae is annexed hereto and made a part of this affidavit.

2. On May 19, 1976, I visited the Metropolitan Correctional Center in New York City (the "MCC") and toured that institution. Included in my tour were those areas of the MCC where inmates were being "double-bunked," i.e. two individuals were housed in one residential room. Those areas included the Honor Unit on the second floor, Unit 3, the seventh floor and the ninth floor. In addition, I have reviewed the Respondents' 9(g) statements in this action, dated October 19, 1976, and the affidavit of Marshall Haimes dated October 19, 1976.

3. Based upon my personal observations of conditions at the MCC, my review of the materials described in paragraph 2 above, and my experience in the field of psychiatry, particularly psychiatry as it relates to detention and correctional settings, it is my opinion that "double bunking" as practiced at the MCC should not have any significant detrimental effects on the physical or psychological health of the inmates at that institution. Some important factors which prompt me to reach this conclusion are (a) the architectural design and finish

Best Copy Available

of the residential rooms and commons areas which convey a non-penal atmosphere and a sense of openness; and (b) the limited period of confinement of any given inmate to the room itself, both in terms of time each day (locked in only for sleeping hours and two count periods), and length of stay (majority of pre-trial inmates are in the MCC 20 days or less). Although the area of some of the residential rooms used for double-bunking may not be ideal, I have not seen any evidence that the "double-celling" practice at the MCC has caused any untoward effects on individual inmates. It does not appear to be psychologically destructive or an unacceptable deprivation of privacy; and there is no evidence it has prompted any increase of deviant sexual or aggressive impulses or tendencies.

William Walter Menninger MD
WILLIAM WALTER MENNINGER, M. D,

Sworn before me on this 27th of December, 1976.

SHIRLEY A. BARNCORD

Shirley A. Barncord 12/27/76
My Commission Expires September [illegible]

A 119

WILLIAM WALTER MENNINGER, M.D.

OFFICE ADDRESS:

Topeka State Hospital
2700 West Sixth
Topeka, Kansas 66606
Telephone: 913/ 296 4226

The Menninger Foundation
Box 829
Topeka, Kansas 66601
Telephone: 913/ 234 9566

HOME ADDRESS:

1505 Plass
Topeka, Kansas
Telephone: 913/ 233 7927

DATE AND PLACE OF BIRTH:
October 23, 1931 - Topeka, Kansas

Social Security No.: 512-28-3162

GRADUATE OF:
1953 A.B. With Great Distinction, Stanford University, Stanford, California
(Phi Beta Kappa, 1953)
1957 M.D. Cornell University Medical College, New York, New York
(Alpha Omega Alpha, 1956)

Post Graduate Training:
1957 - 1958 Internship, II Medical Service (Harvard), Boston City Hospital, Boston, Massachusetts
1958 - 1961 Residency in Psychiatry, Menninger School of Psychiatry, Topeka, Kans. which includes:
7/58 - 6/60 Topeka State Hospital, Topeka, Kansas with assignments including:
Letchworth Village Institute on Mental Retardation 4/60
Peter Bent Brigham Hospital, Boston, Massachusetts, 5/60-6/60
7/60 - 6/61 C.F.Menninger Memorial Hospital, Topeka, Kansas
1965 - Present Topeka Institute for Psychoanalysis, Topeka, Kansas

MEDICAL LICENSES HELD:
1959 - Kansas (#1[illegible]70)
1962 - Oklahoma (#[illegible]828)

CERTIFICATION BY SPECIALTY BOARDS
American Board of Psychiatry and Neurology - Psychiatry, 1963

SERVICE RECORD, ARMY, NAVY, U.S.P.H.S.:
U.S.P.H.S.
1959 - 1964 Active Duty
1964 - Present, Inactive Reserve
Final Rank: Senior Surgeon (Temporary) (Equivalent to Commander, USN, or Lt. Col., USA)
Service Assignments: 7/59 - 6/61 Residency Training
6/61 - 6/63 Federal Reformatory, El Reno, Okla.
7/63 - 8/64 Peace Corps, Washington, D.C.

PRESENT POSITIONS AND OFFICES:

Primary Responsibility:

Assistant Superintendent, Clinical (Clinical Director), Topeka State Hospital, Topeka, Kansas (1972)

Additional Responsibilities:

Director of Residency Training, Topeka State Hospital (1971)
Senior Staff Psychiatrist, The Menninger Foundation (1969)
Lecturer, Center for Applied Behavioral Sciences, The Menninger Foundation (1969)
Menninger School of Psychiatry: Faculty Member (1967)
Member, Management Committee (1971)
Chairman, Admissions Committee (1973)
Consultant, Topeka Police Department, Topeka, Kansas (1965)
Syndicated Columnist, Universal Press Syndicate (1975)

On-Going Consultative and Advisory Responsibilities:

Consultant in Psychiatry, St. Francis Hospital, Topeka, Kansas (1964)
Member, Board of Trustees, Volunteers in Probation, Inc. (affiliated with the National Council on Crime and Delinquency), Royal Oak, Michigan (1968)
Staff Member, Psychiatric Service, Stormont-Vail Hospital, Topeka, Kansas (1969)
Member, National Advisory Board, Fountain House, New York City (1971)
Consultant, Bureau of Prisons, United States Department of Justice, Washington, D.C (1973)
Member, Advisory Board, National Institute of Corrections, Bureau of Prisons, Washington, D. C. (1974)
Member, Board of Editors, Psychiatry Digest, (Editor, 1971-1975) Northfield, Illinois (1975)
Member, Board of Trustees, National Committee for Prevention of Child Abuse, Chicago, Illinois (1975)

On-Going Teaching Appointments:

Faculty Member, Menninger School of Psychiatry (1967) (listed above)
Lecturer, Center for Applied Behavioral Sciences, The Menninger Foundation (1969) (listed above)
Director of Residency Training, Topeka State Hospital (1971) (listed above)
Adjunct Faculty Member, Advanced Pastoral Studies Program, San Francisco Theological Seminary, San Francisco, California (1971)
Adjunct Professor, Corrections and Criminal Justice Program, Washburn University, Topeka, Kansas (1974)
Adjunct Professor (appointment pending), Capitol Complex Center, University of Kansas, Topeka, Kansas (1975)

NATIONAL AND REGIONAL MEDICAL AND PROFESSIONAL SOCIETIES:

- American Academy of Psychiatry and the Law
- American Association for the Advancement of Science
- American College of Physicians (Fellow)
  - Kansas ACP Program Committee: Member, 1970; Chairman, 1972
- American Correctional Association
- American Medical Association
- American Psychiatric Association (Fellow)
  - Committee on Liaison with the American College of Physicians: Member 1974 to date
- American Psychoanalytic Association (Affiliate Member)
  - Committee on Community Psychiatry: Member, 1974
- Boy Scouts of America National Council
  - National Health and Safety Committee: Member, 1970
    - Subcommittee on Health Education: Chairman, 1971 to date
- Group for the Advancement of Psychiatry
  - Ginsberg Fellow, 1959-1961
  - Committee on Mental Health Services: Member, 1967; Chairman, 1973 to 1976
- Institute of Medicine, National Academy of Sciences, 1972 to date
- Kansas District Branch (American Psychiatric Association)
  - Chairman on Clinical Services, 1970 to date
- Kansas Medical Society
  - Commission on Education: 1972 to date
- Mid-Continent Psychiatric Association
- National Council on Crime and Delinquency
- Shawnee County Medical Society
  - Board of Censors: Member, 1973; Chairman, 1974 to 1976
- Volunteers in Probation, Inc. (Division of the National Council on Crime and Delinquency) Advisory Council: Member

SPECIAL HONORS AND APPOINTMENTS

- Phi Beta Kappa, 1953
- Alpha Omega Alpha, 1956
- National Advisory Health Council, Department of HEW, 1967-1971
- National Commission on the Causes and Prevention of Violence, Commissioner (the "Eisenhower Commission"), 1968-1969
- Kansan of Achievement, Topeka Capital-Journal, 1969
- Recognition for Outstanding Service, Rotary Club of Topeka, 1970
- Institute of Medicine, National Academy of Sciences, 1972
- Clinical Examiner, American Board of Psychiatry and Neurology, 1975

SPECIAL INTERESTS:

Professional and Research: Preventive and social psychiatry; applications of psychiatry in law enforcement and corrections; hospital psychiatry and staff relationships; psychoanalysis; human sexuality; public education.

Personal: First Presbyterian Church: Chancel Choir; Stanford University: Member, Stanford Associates; Class Agent and past Vice Chairman of Stanford Annual Fund; Boy Scouts of America: former Explorer Advisor; Cubmaster; Rotary Club of Topeka; Topeka Civic Theater; Writing; Parent Teachers Association: Co-President, Randolph Elementary School PTA 1975-1976 (with Mrs. Menninger).

A 122

William Walter Menninger, M.D.

PAST POSITIONS AND OFFICES HELD: *Full Time

Date of Menninger Foundation Employment:
7/1/60 - 6/30/61
(7/1/61 - 8/27/64 - Military Leave, U.S.P.H.S.)
8/28/64 - Present

*1961 - 1963	Chief Medical Officer and Psychiatrist, U.S.P.H.S., Federal Reformatory, El Reno, Oklahoma
1961 - 1963	Visiting Lecturer, Department of Psychiatry and Behavioral Science, University of Oklahoma Medical School, Oklahoma City, Oklahoma
1962 - 1964	Consultant, National Parole Institutes, Washington, D. C.
*1963 - 1964	Associate Psychiatrist, Medical Program Division, Peace Corps, Washington, D. C. Detailed from the Office of the Director, National Institute of Mental Health, U.S.P.H.S., Bethesda, Maryland
*1964 - 1967	Staff Psychiatrist, C. F. Menninger Memorial Hospital, Topeka, Kansas
1964 - 1971	Senior Psychiatric Consultant, Medical Program Division, Peace Corps, Washington, D. C.
1965 - 1969	Consulting Staff, Stormont-Vail Hospital, Topeka, Kansas
1966 - 1967	Consultant and Member, Special Program Study Group, appointed by the Federal Bureau of Prisons and the U.S.P.H.S. to study the medical program of the Bureau of Prisons and related programs for the U.S.P.H.S.
1966 - 1968	Member, Advisory Committee on Correctional Programs, Office of Law Enforcement Assistance, U.S. Department of Justice, Washington, D.C.
1966 - 1968	Consultant, Mental Health Training Program for VISTA (Volunteers in Service to America), Washington, D. C.
*1967 - 1969	Staff Psychiatrist, Outpatient and Diagnostic Service, The Menninger Clinic, Topeka, Kansas Coordinator of Development, The Menninger Foundation
1967 - 1971	Member, National Advisory Health Council, Department of Health, Education and Welfare, Washington, D. C.
1968 - 1969	Commissioner, National Commission on the Causes and Prevention of Violence, Washington, D. C.
1968 - 1973	Trustee, Volunteers in Probation, Inc. (now an affiliate of the National Council on Crime and Delinquency), Royal Oak, Michigan
*1969 -1970	Clinical Supervisor, Topeka State Hospital (Boisen Service)
1970 - 1970	Member and Secretary, Governor's Penal Planning Council, Topeka, Kansas
*1970 - 1971	Section Director, Woodsview Section, Topeka State Hospital
1970 - 1973	Member, Federal Bureau of Prisons Advisory Panel on Prison Facilities, U.S. Department of Justice, Washington, D. C.
*1971 - 1972	Director, Combined Services Section, Topeka State Hospital, Topeka Kansas
1971 - 1971	Adjunct Professor, Advanced Pastoral Studies Program, San Francisco Theological Seminary, San Francisco, California
1972 - 1975	Member, Board of Editorial Consultants, Mental Hygiene, Arlington, Virginia

Family: Wife: Constance Libbey Menninger, dob Nov. 20, 1931; b. Boston, Massachusetts; A.B. Economics, Stanford University, 1953. Program Analyst, NBC, New York, N.Y. 1953-1956; Member, Board of Education, USD #501 1969-1973; Chairman, Kansas State Advisory Committee to U.S. Commission on Civil Rights, 1974 to date; President, Community Resources Council, Topeka, Kansas 1975-1976; Co-President, Randolph Elementary School PTA, 1975-1976.

Children:
Frederick Prince - May 4, 1957
John Alexander - February 22, 1959
Eliza Wright - September 13, 1960
Marian Stuart - June 30, 1962
William Libbey - March 6, 1966
David Henry - January 26, 1968

LGC:n
75-3973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Filed in chambers
12/29/76

---x

UNITED STATES ex rel. Wolfish, *et al.*,

Relators,

v.

EDWARD LEVI, *et al.*,

Respondents.

---x

AFFIDAVIT

75 Civ. 6000 (MEF)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

LARRY TAYLOR, being duly sworn, deposes and says:

1. I am the Warden at the Metropolitan Correctional Center, New York, New York ("MCC") and a named respondent in this action. I am familiar with the matters set forth herein and submit this affidavit in opposition to petitioner's motion for partial summary judgment.

2. Commencing in late November 1975, the MCC started to replace single beds in some of the residential rooms with double-bunks. As set forth in my prior affidavits submitted herein (dated December 10, 1975 and October 19, 1976), double-bunks were installed in some of the residential rooms to accommodate an expected rise in the inmate population. The following schedule sets forth the present extent (and location) of double-bunking at the MCC (excluding the dormitory unit on 11-South):

	No. of Rooms	
UNIT	Double-Bunk	Single-Bunk
Honor Unit	14	7
3	24	-

UNIT	No. of Rooms Double-Bunk	Single-Bunk
7-North	11	37
9-North	24	24

3. The process of installing these double-bunks was substantially completed by February 1976.* The number of double-bunked rooms in the Honor Unit has changed over time as (a) we increased the number of Honor Unit rooms by one (room A-206 has been added and is designated to have two beds), (b) we increased the number of roomsdesignated to have two beds, and (c) the number of individuals housed in this unit has fluctuated.

4. Since the time that installation of the double-bunks was completed, the number of double-bunked rooms which have actually housed 2 inmates has varied from day-to-day (up to the present maximum of 73 rooms) depending upon the size and composition of the inmate population, and the availability of single-bunked rooms. For instance, although a single-bunked room might be available in the Honor Unit, an inmate in a double-bunked room on Units 7-North or 9-North would not be assigned to that single-bunked room because of security considerations (i.e., the Honor Unit is not locked in and is under less supervision than the other units); likewise, if a single-bunked room is available on 5-South (women's unit), a double-bunked inmate from 7-North or 9-North, all of whom are male, would not be assigned to that single-bunked room. In addition, the HCC's policy is to house pre-

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* Respondents Rule 9(g) Statement, p. 21, erroneously noted that 23 rooms on 9-North, rather than 24 rooms, were double-bunked.

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trial inmates separately from post-conviction inmates to the greatest extent possible, and therefore, if a single-bunked room is available in a post-conviction unit, a pretrial detainee would not generally be assigned to that room and would be assigned to a pretrial unit and possibly a double-bunked room there (if no single-bunked rooms were available). Although Unit 3 has the capacity to house 48 inmates (all 24 rooms are double-bunked), the MCC has placed a limit of 40 as the maximum number of inmates to be housed in this unit. On a few occasions in the past, the total in this unit reached 41 inmates; for the past several months, the average number of inmates in this unit has been 37. As set forth in the Rule 9(g) Statement, this unit is used to house inmates in protective custody, and because of that fact, inmates from the general population can not be housed in this unit.

5. Consistent with these above-described constraints, I have, however, directed and instructed the unit managers to minimize the use of double-bunking by seeking to first fill all available rooms on a one-person-per-room basis and then, only if needed, to assign inmates to the second bunk. I have further directed the unit managers that when a single-bunked room becomes available in a unit, the inmate in that unit with the longest period of assignment to a double-bunked room should be reassigned and transferred to the single-bunked room. Although on occasion these various policies and directives have not uniformly been implemented, substantial progress has been made in this regard, and further steps are being taken to ensure maximum

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conformity with the above-described guidelines.

LARRY TAYLOR
Warden, MCC

Sworn to this 29th day of

December 1976.

Notary Public

AUTHORIZED BY T[illegible] Y 7, 19[illegible]
TO ADMINISTER OATHS ([illegible] U.S.C. 4004)

LGC:ik
75-3973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[illegible] filed in Judge Frankel's chambers
1-19-76

---x

UNITED STATES OF AMERICA Ex Rel, :
LOUIS WOLFISH, :

Relators, :

Mr. Zupa

-v- :

UNITED STATES OF AMERICA, Et Al., :

Respondents. :

---x

AFFIDAVIT

75 Civ. 6000 (MEF)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

LARRY TAYLOR, being duly sworn, deposes and says:

1. I am the Warden at the Metropolitan Correctional Center, New York City (the "MCC") and I submit this affidavit in opposition to the motion of the Relators herein to preliminarily enjoin* the MCC from implementing a new system of visiting for inmates, including the schedule for, and number of, such inmate visits per week.** As set forth more fully below, the proposed changes challenged by the Relators in this motion are part of MCC Policy Statement No. 7300.4B, dated January 17, 1976

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*A temporary restraining order having been entered on Friday afternoon, January 16, 1976.

** Relators are challenging the schedule for non-attorney visits. Unless otherwise noted, "visiting" or "visits" as referred to herein related only to non-attorney visits.

which has been in the process of formulation by the MCC staff prior to the commencement of this proceeding and for more than three months and is based on its experience regarding inmate visits during the approximately five and one-half months the MCC has been open.

BACKGROUND

2. Just prior to the opening of the MCC on August 2, 1975, a handout on inmate visits was prepared under my direction which indicated that such visits would be permitted Monday through Friday from 11:00 A.M. to 3:30 P.M., and on weekends and holidays from 9:00 A.M. to 3:00 P.M.*. Although not setting forth any further limitations as to the time, number of visits per week, or number of individuals per visit, paragraph 3 entitled "VISITING LIMITATIONS" stated that

> "Because of space limitations, it may be necessary to terminate visits when overcrowding occurs."

These guidelines were temporary, to be revised as experience and conditions would subsequently warrant.

3. During the first two months of operation, the inmate population and number of visitors were increasing. By the second week of September, the number of visitors had increased to approximately 1,500 persons per week and at certain times of the week (weekends and the beginning of the week) the number of visits would rise substantially, thereby straining the capacity of the visiting facilities and causing delays in processing the visitors.

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* A copy of that handout is annexed hereto as Exhibit "A".

LGC:n

4. Because of the large number of visitors, as well as the apparent concentration of visits at certain times of the week, I directed the MCC staff in September 1975 to revise the initial visiting guidelines and formulate a new schedule designed to more effectively and efficiently handle this large number of visitors. On or about October 5, 1975, a new handout was prepared and made available setting forth the following schedule*:

5th Floor:	4:30 P.M. to 7:30 P.M.	weekdays
	8:30 A.M. to 11:30 A.M.	weekends and holidays
7th and 11th Floors:	12:30 P.M. to 3:30 P.M.	daily
9th Floor:	8:30 A.M. to 11:30 A.M.	daily

That handout further indicated that each inmate would be permitted three visits per week for a maximum period of 3 hours (¶ 3).**

5. The number of visitors at the MCC has risen to approximately 2,000 to 2,500 per week, with up to 500 of those visitors visiting on Saturday and 700 visiting on Sunday.

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* A copy of this handout is annexed hereto as Exhibit "B" and was annexed as part of Exhibit "C" to my affidavit dated December 10, 1975 which is filed in this action.

** Special arrangements were also made for inmates in the hospital or in protective custody. Also, members of the cadre housed on the 2nd floor would visit during the times provided for inmates on the 5th floor.

LGC:ik

Notwithstanding our attempt through promulgation of the October 5 guidelines to prevent crowding in the visiting facilities and reduce delays in processing the visitors by staggering the visiting hours throughout the day, concentration of visits at certain times of the week has continued to occur.

MCC POLICY STATEMENT 7300.4B

6. Beginning the last week of October, Associate Warden Johnson and I began to formulate a comprehensive policy statement regarding inmate visiting. Part of that policy statement would deal with the number and length of visits per week. As part of this process, on December 11, 12 and 13, 1975 a unit management seminar was held for the senior staff members of the MCC (a representative from the Regional Office of the U.S. Bureau of Prisons also attended) at which these questions, among others, were discussed and considered.

7. As a result of these efforts, and reflecting our experience at the MCC over the past several months, I promulgated MCC Policy Statement No. 7300.4B which was to be implemented on January 17, 1976.* As indicated in the policy statement and the handout prepared by the MCC which is annexed to the Relators' motion papers as Exhibit "A", inmates are permitted two visits (of up to 3 people at a time) per week lasting one hour each, at the following times:

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* This policy statement, which is annexed hereto as Exhibit "C", is promulgated under U.S. Bureau of Prisons Policy Statement 7300.4A, dated April 24, 1972, which is annexed to my affidavit dated December 10, 1975 in this action.

LGC:n

2nd, 5th, 9th Floors: 9:00 A.M. to 3:00 P.M. Sunday

5:00 P.M. to 8:30 P.M. Wednesday and Friday

3rd, 7th, 11th Floors: 9:00 A.M. to 3:00 P.M. Saturday

5:00 P.M. to 8:30 P.M. Tuesday and Thursday

8. As made clear in the Policy Statement, this schedule is intended to enable the inmates to foster and maintain close family ties and community contacts consistent with practical considerations of security, availability of staff and visiting space. By providing early evening visiting hours during the week, we believe that an inmate's opportunity to visit with family members and friends (who are likely to be working or in school during the day) will be maximized and will substantially reduce conflicts between court appearances and visits. Also, it will enable the MCC to increase the availability of correctional counsellors to confer, if appropriate, with the inmate and his or her family during visits. Further, the rules specifically provide for flexibility as to, *inter alia*, the duration and number of persons permitted for each visit (¶ B, p. 2; ¶¶ D and F, p. 6).* For instance, the statement provides that

> "Visits are limited to three persons at one time. If additional members of the family or approved visitors wish to visit on the same occasion, the time must be divided among them proportionately.

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* It should be noted that additional special visiting arrangements for the cadre have previously been permitted and are under active consideration for the future by the MCC.

> In other words, if six visitors wish to visit during one visiting period, the visit should be divided into two groups and each would be allowed 30 minutes." (¶ B, p. 2)

9. Although Policy Statement No. 7300.4B, including the changes in the number of visits and schedule, was under consideration for a substantial period of time, its implementation was to coincide with the change of the 90-day duty roster at the MCC scheduled for January 17, 1976. Under the collective bargaining agreement between the MCC and the American Federation of Government Employers, Local 3148 (the union representing all of the institution's staff below department head), a duty roster is prepared for a 90-day period; this roster sets forth the position(s) and hours of duty an individual staff member will fill during that 90-day period and is a planning tool for both the institution and the members of the staff. As required by binding past practice, the MCC submitted the proposed duty roster to the union president approximately two weeks inadvance of its implementation for review by the union. That review has been completed, and with the union's approval, the new roster was to go into effect on January 17, 1976.

10. In response to the Court's issuance of a temporary restraining order in this matter on January 16, 1976, adjustments as to the work schedule and duty assignment for at least five members of the MCC staff (to reflect the change back to the old visiting schedule) had to be made immediately; should this restraining order remain in effect beyond January 20, 1976, additional changes in the 90-day duty roster may be required.

COMPARABLE FEDERAL INSTITUTIONS

11. Because the Relators, through the affidavit of counsel, have made statements regarding visiting regulations at some other federal institutions, I am setting forth the following facts, as conveyed to me by officials at two comparable institutions, to complete the record. The Chicago MCC which opened in November 1975 has the following visiting regulations:

(a) Pre-trial detainees:

- 2:00 P.M. to 9:30 P.M., Thursday through Monday
- 1 hour/day, 5 days per week*
- 2 individuals/visit

(b) Admissions and Orientations (individuals just arriving at the institution)

- 2:00 P.M. to 9:30 P.M.
- 1 hour/day, 7 days per week
- 2 individuals/visit

(c) Cadre

- 4:30 P.M. to 9:30 P.M. Monday, Thursday and Friday
- 2:00 P.M. to 9:30 P.M. Weekends and holidays
- 2 hour/visit, three times per week (or 6 hours maximum)
- 2 individuals/visit

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* I am informed that initially this visiting was permitted 7 days per week but because of the large number of visitors was recently cut back.

LGC:n

Further, I have been informed that the Chicago MCC contemplates changes, including further reductions, in those visiting hours in order to accommodate the expected increase in the number of visitors as the institution reaches full inmate capacity.*

12. The MCC in San Diego, California, another federal institution comparable to the New York MCC which opened in approximately September 1974, has the following visiting schedule:

(a) Protective Custody:
5:30 P.M. to 6:30 P.M. daily
1 hour/visit, 2 times per week

(b) Cadre:
6:30 P.M. to 9:30 P.M. weekdays
8:30 A.M. to 3:30 P.M. weekends and holidays.
1 hour/visit, four times per week

(c) All other inmates:
6:30 P.M. to 9:30 P.M. weekdays
8:30 A.M. to 3:30 P.M. weekends and holidays.
1 hour/visit, two times per week

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* As of the evening of January 16, 1976, the Chicago MCC was at approximately 75% capacity (overall capacity of 385 inmates).

LGC:ik Further, I have been informed that the San Diego MCC has been averaging approximately 75 to 100 visitors per day on the weekends, and 35 to 40 visitors per day during the week.*

13. The visiting regulations proposed for implementation at the MCC on January 17, 1976 are quite comparable to those at the San Diego MCC which has now been in operation for over one year. As noted above, although the Chicago MCC presently has more liberal visiting regulations, it is contemplated that, like the situation here at MCC New York, those regulations will be changed as that institution's population rises and its experience in this area broadens.

SUMMARY

14. The visiting regulations, including the time schedule, length and number of visits, incorporated in MCC Policy Statement No. 7300.4B is a proper attempt on the part of the MCC to provide inmates with a reasonable,regular and appropriate opportunity to visit with family and friends, while taking into account the legitimate interests of the MCC as to security, staff and space limitations. Further, it is an attempt, based upon our experience at the MCC, to handle in an efficient and expeditious way the large number of visitors who come to the institution on a weekly basis.

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*An additional example of visiting regulations at the City Detention Center on Rikers Island -- which regulations were upheld by Judge Lasker of this Court -- is reported in *Rhem* v. *Malcolm*, 389 F.Supp. 964 (S.D.N.Y.), *judgment amended in part*, 396 F.Supp. 1195 (S.D.N.Y. 1975).

LGC:lk

WHEREFORE, it is respectfully requested that this Court dissolve the temporary restraining order issued on January 16, 1976 and deny the Relators' motion for a preliminary injunction, thereby permitting the MCC to fully implement the procedures contained in MCC Policy Statement No. 7300.4B and return to the 90-day work roster which was to begin on January 17, 1976.

Larry Taylor

LARRY TAYLOR
Warden
Metropolitan Correctional Center

Sworn to before me this
19th day of January, 1976

NOTARY PUBLIC

"AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 4004)".

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UNITED STATES DEPARTMENT OF JUSTICE
METROPOLITAN CORRECTIONAL CENTER
150 PARK ROW
NEW YORK, N. Y. 10007

1. **LOCATION OF M. C. C.**

The Metropolitan Correctional Center is located in Lower Manhattan, near the United States Courthouse in an area known as Foley Square (Pearl & Park Row). Subways and buses provide adequate transportation to the immediate area. There are no institution parking facilities. A receptionist will direct you to the elevators and the appropriate floor where you will visit.

2. **VISITING HOURS**

Visiting with inmates at the M. C. C. is permitted on Monday through Friday from 11:00 A.M. to 3:30 P.M. and on weekends and holidays from 9:00 A.M. to 3:00 P.M. Special visits on weekdays from 4:30 P.M. to 6:30 P.M. must be approved in advance by Unit Managers. This period is also encouraged for attorney visits.

3. **VISITING LIMITATIONS**

Because of space limitations, it may be necessary to terminate visits when overcrowding occurs.

4. **VISITING REGULATIONS**

(Adults)

All visits will be conducted in a dignified and acceptable manner. Rude and [illegible] conduct will mean possible termination of the visit. Couples may embrace at the beginning of the visit and upon its conclusion. We ask that inappropriate physical contact be avoided during the visit. Parents and guardians are completely responsible for the conduct and actions of children.

5. **ARTICLES AND MONEY [illegible]**

No articles or money may be given directly to the inmate. Visitors may deposit funds (American currency only) for an inmate's account with the visiting room officer. No other items will be accepted. Money sent by mail should be in the form of U. S. Postal Money Orders. Articles such as books, magazines, newspapers will not be accepted from visitors. These items must be mailed directly from the publisher or place of purchase.

6. **[illegible]**

Visitors will be asked to walk through a metal detector before visiting the inmate. All packages and containers are subject to inspection by [illegible]. Visitors who attempt to introduce any unlawful [illegible] into this institution [illegible] may be prosecuted under Federal [illegible] released [illegible]

Best Copy Available

METROPOLITAN CORRECTIONAL CENTER

150 Park Row

Sept—75

Oct Nov 75

1. LOCATION OF M.C.C.

The Metropolitan Correctional Center is located in lower Manhattan, near the United States Courthouse in an area known as Foley Square. Subways and buses provide adequate transportation to the immediate area. There are no institution parking facilities. A receptionist will direct you to the elevators and the appropriate floor where you will visit.

2. VISITING HOURS

The Metropolitan Correctional Center will make every effort to provide the maximum opportunity for inmates to visit with their families, for Attorneys to confer with their clients, and for appropriate agency personnel to visit inmates.

Because of limited visiting space and operational priorities, we must place some limits on the number and lengths of visits. In an effort to make maximum use of limited space, we have developed the following schedule. Based on past experience, we hope this schedule will allow us to get you to the visiting room faster and provide you with a more leisurely visit. The person you are visiting should advise you of his or her floor assignment, so you'll know where to visit.

Phone #791-9130

a) FIFTH FLOOR (5th) Unit Manager - Mrs. Scozzari - Ext:474 - 293 - 294
4:30 P.M. to 7:30 P.M. daily. 8:30 A.M. to 11:30 A.M. week-ends and holidays. -

b) SEVENTH FLOOR (7th) Unit Manager - Mr. Haney - Ext.305 - 306- 480
12:30 PM to 3:30 P.M. daily 7 days a week

c) NINTH FLOOR (9th) Unit Manager - Mr. Echeandia · Ext. 339- 340 - 491
8:30 A.M. to 11:30 A.M. daily seven days a week.

d) ELEVENTH FLOOR (11th) Unit Manager - Mr. Matthews - Ext. 348 - 349 - 495
12:30 P.M. to 3:30 P.M. daily. 7 days a week.

3. VISITING LIMITATIONS

It may be occasionally necessary to terminate visits when overcrowding occurs. Under normal circumstances, each person at the M.C.C. may receive up to three visits per week for a maximum period of three hours. Special visits may be arranged through the Unit Manager, when it is determined that a visit is necessary during other than regular visiting hours. Arrangements should be made through the Unit Manager and the person being visited.

We hope you enjoy your visit at the M.C.C. If you have any question, please bring them to our attention.

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4. ATTORNEY VISITS

Attorneys are encouraged to visit their clients between 4:30 P.M. and 6:30 P.M. daily. Special arrangements have been made for Attorney conferences on the 9th Floor. Attorneys may also visit their clients, using the same hours and accommodations afforded families. Attorneys requesting visits at other times must contact the Unit Manager or Case Manager to make the necessary arrangements.

5. VISITING REGULATIONS

For the comfort of all visitors, we request your cooperation in the following areas. Couples may embrace at the beginning of the visit and upon its conclusion. We ask that inappropriate physical contact be avoided during the visit. We also ask that parents or guardians be responsible for the conduct and actions of children. In respect for the rights of non-smokers, we request that all persons avoid smoking in elevators and visiting areas. Disagreements with regulations should be taken up with the Administration either by phone or letter. Rude or inappropriate conduct should be avoided in the visiting rooms. Failure to comply with this request could result in a loss of visiting privileges.

6. ARTICLES AND MONEY IN VISITING AREAS

No articles or money may be given directly to the person your visiting. Visitors may deposit funds (American currency only) for an inmate's account with the visiting room officer. No other items will be accepted. Money sent by mail should be in the form of U. S. Postal Money Orders. Articles such as books, magazines, newspapers will not be accepted from visitors. These items must be mailed directly from the publisher or place of purchase.

7. TRAFFIC IN CONTRABAND ARTICLES

For your convenience and protection against loss of personal property we'd appreciate it if you'd not bring food, drugs, knives or other devices used for self-protection to the institution. Visitors will be asked to walk through a detector before visiting the floor. All handbags and containers are subject to inspection by an x-ray machine. Visitors who attempt to introduce any unlawful articles into this institution, or attempt to smuggle articles from the institution may be prosecuted under Federal Laws. "Whoever, contrary to any rule or regulation promulgated by the Attorney General, introduces or attempts to introduce into or upon the grounds of any Federal, penal or correctional institution, or takes or attempts to take or send therefrom anything whatsoever shall be imprisoned not more than ten years- Title 18, U.S.C., Sec. 1791, C. 87." Food items or beverages are not permitted in the institution. If you have any questions regarding visiting procedures, please feel free to ask the lobby officer or Receptionist for information.

FEDERAL PRISON SYSTEM **METROPOLITAN CORRECTIONAL CENTER**
NEW YORK, NEW YORK 10007

Policy Statement

NUMBER 7300.4B

DATE 01/17/76

SUBJECT: Visiting (Inmate)

POLICY. It is the policy of the Bureau of Prisons to develop activites by which close family ties and good community contacts can be fostered and maintained. Recognizing the importance of these relationships, the Metropolitan Correctional Center has authorized liberal use of telephones, has implemented a furlough program, and makes social visits available for inmates and their families on a regular basis. It will continue to be the policy of the M.C.C. to make maximum use of visiting facilities and staff resources for the purpose of maintaining family ties.

Because of the nature of the facility, however, visits must be conducted under appropriate supervision, so that security is maintained and the rights of inmates and their families are protected. Supervision must be provided in a way that will contribute to good public relations and a better understanding of the institution's responsibility and goals.

PURPOSE. The following information is being published as guidelines for staff, inmates and visitors, so that there is a clear understanding of what is expected from all concerned.

VISITING REGULATIONS. Although it is the intention of the Bureau of Prisons and the administration to provide the maximum amount of time possible for visiting, some practical considerations require us to place certain limitations on this activity. Available staff and visiting space, of course, are two of the biggest constraints that must be accounted for in determining the time and number of visits allowed per week. Other institution responsibilities as well as expenses may from time to time require us to alter published regulations and schedules.

GUIDELINES

1. Visitor Registration and Visiting Days

In order to assure that contraband is not introduced into the institution and that only authorized visitors are being allowed access to visiting facilities, strengthening controls must be in effect for the registration of visitors.

A. Reception of Visitors

It is occasionally necessary to lock the front entrance of the institution. Under these circumstances an effort should be made to identify visitors as rapidly as possible and allow his or her

Exh C

entrance immediately. When visitors arrive, they should be instructed to report to the visiting desk where they will be provided with a registration form and a number which indicates their place in line for registration. When their number is called by the Front Lobby Officer, registration can be completed and a check made to make sure they're on an approved visiting list. Individual visitors will be advised that they are subject to a search of their person and belongings. Medication, food, and other items considered to be contraband within the institution must be left either at home or at the front desk. We are not responsible for items left at the front desk and visitors must be so informed.

Once the screening procedure has been completed, the visitor's left hand will be stamped with an invisible ink symbol and the visitor will be shown to a seat to await elevator transportation to the visiting room. Because of continuing problems with supervision of the rest rooms in the visiting rooms, bathroom facilities will not be available to visitors or inmates on the floor. Visitors should be encouraged to use facilities in the lobby before their visit starts. Once the screening procedure has been completed, visitors can not leave the designated area without going through the process again when they return

A handout has been prepared for all visitors to clarify regulations in effect at this facility. These handouts should be made available upon request.

B. Number and Length of Visits

Because of limited space in our visiting rooms, and the number of visits we receive in the institution on a weekly basis, we find it necessary to place some limitations on the number and length of visits. The attached schedule, which can be reproduced as a handout, provides all the necessary information regarding the visiting days and time for each unit. Visits are limited to two visits a week, a maximum time of one hour each. Conditions permitting, the time limitation may be occasionally extended (if ample room exists). Visits may be reduced to less than one hour on the event of extreme overcrowding and lack of space.

Visits are limited to three persons at one time. If additional members of the family or approved visitors wish to visit on the same occasion, the time must be divided among them proportionately. In other words, if six visitors wish to visit during one visiting period, the visit should be divided into two groups and each would be allowed 30 minutes.

C. Visiting Days

Three days, including one week-end day, have been set aside for visiting on each unit. For the convenience of visitors and to avoid conflicts with court schedules, all visits will be held from 5:00 p.m. to 8:30 p.m. during weekdays and from 9:00 a.m. to 3:00 p.m. on weekends. Visiting time delayed because of counts will be extended an equal amount of time.

2. Visiting Rooms

The Metropolitan Correctional Center was designed in such a way as to provide ten separate visiting rooms; one for each living unit. We have attempted to make these facilities as comfortable and informal as possible by providing tables, chairs and other less formal furniture arrangements. We also attempt to prevent overcrowded conditions by placing time restrictions on visits and scheduling them in such a way as to spread out any large number of visits we receive over a maximum period of time. Adherence to the following simple rules will also make visits more pleasant for persons of all ages.

A. Smoking

Because visiting rooms are public areas and somewhat confined, no smoking is permitted in these rooms. Smoke is a health hazard for all persons including non-smokers and therefore, this regulation must be strictly enforced. Officers working this post must also avoid smoking while on duty.

B. Personal Conduct

Kissing and embracing is permitted upon arrival and at departure. Other than hand holding, no other contact is permitted at any time. Discretion and good judgment must be used in enforcing this regulation. For example, inmates should be allowed to hold small children throughout the duration of the visit. Our primary purpose in limiting other physical contact is to control contraband traffic and behavior, which may be offensive to other visitors.

C. Rest Rooms

Experience has shown that bathrooms in the visiting units cannot be properly supervised. Therefore, they will remain locked and not used except in extreme emergencies.

D. Control of Movement

Doors separating the visiting rooms from one another and from the Officer should remain locked when the Officer is at his station. A visitor's departure must be delayed until the inmate being visited is removed from the visiting room.

Visitor identification symbols must be checked by the visiting room officer on the 11th, 9th, 7th, and 5th floors before opening the door leading to the elevator. Black lights are provided for this purpose. Officers must be sure that they are familiar with the symbol for the day. It changes daily.

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E. Food & Beverages

Visitors are not permitted to bring food or beverages of any kind to the visiting room. Items of this nature are considered contraband.

F. Contraband

Inmates must be searched going into and leaving the visiting room. They are not permitted to take anything into the visiting room except legal papers approved by the Unit Team. Contraband of any kind found in the visiting room will be confiscated and the Correctional Supervisor notified immediately.

G. Clothing

Inmates entering the visiting room must be in full uniform, including shoes. Visitors must also have proper attire. Again, considering modern standards, discretion and good sense must be exercised in enforcing visitor dress codes.

H. Visiting Time

All visits will be limited to a one hour maximum in an effort to provide an equitable distribution of visiting time for all inmates and their families. Officers will record the name of all visitors as they enter the visiting room noting the time their visit starts and the time it should end. After fifty minutes, the visitor should be notified to complete the visit within ten minutes. Please note that visiting time does not start until the inmate and visitor start the visit.

3. The Visiting Room Officer

All visits will be supervised to prevent the passage of contraband and to insure the security and safety of inmates, visitors, staff and the institution. Visiting Room Officers, also have an opportunity for extensive contact with the public, government officials and family members. Therefore, this position has an inevitable and an extensive public relations aspect. The impressions gained by visitors of what we're trying to do is of the utmost importance.

For these reasons, selections for this correctional assignment should not be left to chance or shifted frequently. The Officer's personal appearance, manner of speech and personality become important considerations. This position requires a person to be tactfully firm, alert and capable of making good common sense decisions without hesitation. It is also important that officers working these assignments become totally familiar with the visiting room rules and regulations so that they can be consistently enforced in all ten of our visiting rooms. Since inmates and their visitors are not allowed to smoke in the visiting rooms, Officers occupying this position must also refrain from smoking. This and other responsibilities of this particular post must be strictly monitored by Correctional Supervisors.

4. Authorized Visitors

The Unit Management staff will be responsible for compiling a regular visiting list for each inmate. In an effort to control the number of visitors received each week, visits will be limited to immediate family plus two friends. Under no circumstances, however, can there be more than 10 people on an approved list at any one time. Following is a authorized visiting list once a suitable investigation has been completed.

A. Members of the Immediate Family

In keeping with our belief that family ties are important to those confined, all immediate family members can be approved for regular visits, provided the number does not exceed ten. This includes mother, father, brothers, sisters, wife or husband, and children. Under ordinary circumstances, there will be no question about placing such persons on an individual's visiting list. In addition, we would be happy to consider under this category, grandparents or parent substitutes where the natural father or mother is deceased. Children or young adults under the age of 18 must be accompanied by a parent or guardian.

B. Other Relatives

Mother and fathers-in-law may be placed on visiting lists when it can be demonstrated that a good relationship exists between the inmate and his or her spouse.

C. Friends and Associates

Visiting privileges may be extended to friends and other non-relatives if it can be ascertained that the association of friendship is a constructive one. The number of friends or associates appearing on the visiting list cannot exceed two at any one time and combined with family and relatives, the total list must still be ten or less. Even if a person elects not to list his family as visitors, the number of friends or associates cannot be more than two. The individual inmate must make decisions as to who should be removed from his list when family members make ten approved visitors and he wants to add one or two more friends.

D. Group Visits

Because of limited space available for visits, ordinarily group visits will not be permitted. Exceptions can be made provided the visitor or inmate in question applies in advance for special permission to the Warden by letter and space is available. Any visit which exceeds three visitors is considered to be a group visit. For those inmates who have a large number of children, special arrangements can be made for a group visit provided permission is obtained in advance.

E. Visits from Community Groups and Individuals

Occasionally, an individual is committed to our custody who has no friends or relatives in the community. Under these circumstances, the person may benefit from obtaining visits from interested community groups or individuals, who volunteer their services. Visits of this nature may ultimately aid in developing and maintaining positive community ties which may influence man's adjustment upon release. The number of visitors authorized under this category may not exceed two. Sources which should be drawn upon for these special visits are civic and religious organizations and persons whose interests and qualifications for this kind of service may be known by various staff members. Generally, visits for inmates already involved in community-based programs will be held in the institution visiting room. However, special visits in the community may be specifically approved but only in accordance with the policy statement on inmate furloughs (see PS 7300.12A).

F. Special Visits

Special visits may be authorized by the Warden or his designated representative. These persons include Clergymen, former or prospective employers, Sponsors, Parole Advisors, and relatives who may have traveled long distances and are not on the authorized visiting list. Again, preparations should be made in advance via letter to the Warden.

G. Business Associates

It is the policy of the Bureau of Prisons, that no inmate shall be permitted to engage actively in a business or profession while serving a sentence. Persons involved in such activity prior to confinement are expected to delegate authority for the operation of their business or profession to qualified persons in the community.

This does not preclude an individual from having an occasional visit which may be necessary to protect his resources or financial interest. Even though the operation of the business or profession has been turned over to another person, there may be times when decisions must be made which will substantially affect the assets or prospects of the business. Under those circumstances, special permission can be obtained for a one time visit.

Before authorization is given for a visit of this nature, the Unit Management staff will be responsible for ascertaining whether or not the business is legitimate. The time allowed for the visit will be determined by the Warden. In those instances where there appears to be an excessive number of requests for business consultation, it should be brought to the Warden's attention. The Warden is further obligated to notify officials in the Central and Regional Offices of the Bureau of Prisons.

H. Ex-offenders, Co-defendants, Witnesses and Persons with prior criminal convictions

The existence of a criminal conviction in and of itself does not constitute a barrier to a proposed visit. Consideration should be given to the nature, extent and recentness of the conviction. This information must be weighed against the value of the relationship and all information should be passed on to the Warden by the Unit Management Staff for a final decision. Generally ex-offenders will not be allowed to return to the institution as visitors until they have been released for a substantial period and it is determined that they are making an appropriate adjustment in the community.

5. Visits for New Arrivals and Persons Not in Regular Inmate Population

A. Admissions Status

Inmates who have just been committed to the Metropolitan Correctional Center usually do not have an opportunity to make out a visiting list for several days. During this time, visits will generally be limited to the immediate family. It is important, however, that flexibility and good judgment be used before disapproving visitors during this time.

B. Hospital Patients

When visitors come to see an individual who is hospitalized, the Hospital Administrator, in consultation with the Chief Correctional Supervisor, will determine whether a visit should take place and if so, whether it should be held in the hospital or in the Hospital Visiting Room. Visits that are allowed to take place in the Hospital will be supervised and the Chief Correctional Supervisor will provide an escort for the visitors. When the Hospital Administrator recommends against the visit and the offender is suffering, from an infectious disease, is in a psychotic or emotional episode, or is otherwise not in condition to see visitors, the situation should be very carefully explained by the Hospital Administrator or his authorized representative to the visiting party.

C. Administrative Detention of Segregation Status

Visiting privileges should not be taken away from an inmate who has violated institution rules and regulations, unless those regulations deal specifically with visiting procedures. Inmates in Administrative Detention or Disciplinary Segregation may occasionally be denied a visit, if in the opinion of the Warden or his authorized representative such a visit would jeopardize the security of the institution.

6. Attorney Visits

Attorneys are encouraged to visit their clients between 5:00 p.m. and 8:30 p.m. daily. These visits will take place in the regular visiting room unless specific requests to the Warden are made for more private accommodations. Attorneys may also visit their clients from 9:00 a.m. to 3:00 p.m., but we must be notified in advance of these visits so special arrangements can be made for appropriate conference facilities.

Persons requesting attorney visits should be referred to the Executive Assistant to the Warden or the Unit Manager. In event either of these two people are not available, the request should then go to the Associate Warden of Programs or the Warden's Secretary. Every effort should be made to expedite attorney visits as rapidly as possible. Long delays are indefensible. The Correcitonal Supervisor on duty is required to give escorting services his personal attention to assure that these visits are handled in an expeditious manner.

Attorneys are required to produce identification which adequately identifies them as attorneys. Arrangements for interpretors must be made in advance by letter. Telephone arrangements can be made in emergencies but confirming letters are requested.

for Larry F. Taylor
Warden

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VISITORS GUIDE

The Metropolitan Correctional Center wishes to extend a sincere welcome to all visitors. We have attempted to establish a visiting program which we hope will be pleasant and convenient for everyone. The schedule which is printed on the last page provides a more equitable distribution of visiting time and also makes use of all possible space and staff for visiting. The following are a few simple rules which we hope you'll read and follow. If you have any questions please feel free to ask any staff member. If you have any complaints, we'd appreciate your written comments in the form of a letter to the Warden.

● SMOKING

Because visiting rooms are public areas and somewhat confined, we ask that you not smoke during your visit. Smoking endangers the health of all visitors including children and nonsmokers.

● CONTRABAND

Because of the nature of our facility, certain items are not allowed in the visiting room. Drugs ... medication ... alcohol ... beverages ... food ... weapons or objects that could be used as weapons are not permitted. Each visitor will be searched and contraband items will be confiscated or withheld at the desk. It is advisable to leave items of this nature at home. At this time we cannot be held responsible for items left in our lobby.

● REGISTRATION

All visitors must register at the desk. Persons who have not been approved as visitors will not be admitted. Permission for special visits must be obtained in advance. All visitors going beyond the Main Lobby will be stamped with an invisible identification symbol. The identification is changed daily to ensure accurate identification of visitors upon departure. Your departure from the visiting room will be delayed until the person you're visiting is returned to the living unit. Your invisible identification will also be checked with special equipment before you leave. These are necessary requirements and we appreciate your cooperation. You are authorized two visits per week lasting one hour each in duration.

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● VISITING ROOM GROUND RULES

Visiting periods are limited to one hour so that we can accommodate all the people who arrive for visits on a daily basis. The visiting room officer will record the time your visit starts and remind you when its over. Because of reoccurring problems with contraband, we do not provide rest room facilities in the visiting rooms. We might suggest that your children pay a visit to facilities in the first floor lobby prior to starting the visit.

Family members and friends are allowed to embrace upon arrival and departure from the visiting rooms. During the visit however we ask you not to engage in any physical contact with the exception of hand holding. Though we're not necessarily prudes, we want the visiting room to be an enjoyable place for person's of all ages. From experience, we have also learned that excessive physical contact leads to increased problems with contraband.

● ELEVATOR AND DOORS

Elevators are controlled by our Control Center and cannot be controlled by passengers. You can speak to the Control Center by simply talking once you're in the car. All elevators are monitored. Entrance to and from elevators are also monitored by motion sensitive cameras. Our Control Center can see you and hear you when ever you're in these areas. Doors to the visiting room are also controlled by our Control Center. The officer in the visiting room does not have keys or the capability of opening this door. Please be patient if there is sometimes a delay. Our no smoking regulation begins once you step foot on the elevator. Ash trays are provided by each elevator for your convenience.

● VIOLATION OF REGULATIONS

Violation of regulations pertaining to visits will result in disruption of visits and could lead to prosecution of the visitor for violation of Federal Laws.

We hope your visits will be enjoyable and comfortable. Your cooperation will help things run more smoothly so please abide by the regulations we've developed and come back again.

VISITING SCHEDULE

LIVING UNITS	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
11th FLOOR			5:00 P.M. ≡ 8:30 P.M.		5:00 P.M. ≡ 8:30 P.M.		9:00 A.M. ≡ 3:00 P.M.
9th FLOOR	9:00 A.M. ≡ 3:00 P.M.			5:00 P.M. ≡ 8:30 P.M.		5:00 P.M. ≡ 8:30 P.M.	
7th FLOOR			5:00 P.M ≡ 8:30 P.M		5:00 P.M. ≡ 8:30 P.M.		9:00 A.M. ≡ 3:00 P.M.
5th FLOOR	9:00 A.M. ≡ 3:00 P.M.			5:00 P.M. ≡ 8:30 P.M.		5:00 P.M. ≡ 8:30 P.M.	
3rd FLOOR			5:00 P.M. ≡ 8:30 P.M.		5:00 P.M. ≡ 8:30 P.M.		9:00 A.M. ≡ 3:00 P.M.
2nd FLOOR	9:00 A.M. ≡ 3:00 P.M.			5:00 P.M. ≡ 8:30 P.M.		5:00 P.M. ≡ 8:30 P.M.	

Court Index No.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA Ex Rel,
LOUIS WOLFISH,

Relators,

-v-

UNITED STATES OF AMERICA, Et Al.,
Respondents.

AFFIDAVIT

75 Civ. 6000 (MEF)

THOMAS J. CAHILL

Tel: ~~264-3211~~ *United States Attorney,*
(212)791-1966 *Attorney for* Respondents

Due service of a copy of the within is hereby admitted.

New York, ..., 19......

Copy rec'd.

....
Attorney for ....

To

....
Attorney for 7/19/76

Form No. USA-33s-272
(Rev. 1-28-66)

FPI—SS—2-9-71—20M—6049

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You will please take notice that a ....
which the within is copy, was this day
ly entered in the within entitled action,
the office of the Clerk of this Court.
ted, N.Y., ... 19......

Yours, etc.,

....
United States Attorney,
Attorney for ....

....
Attorney for ....

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Please take notice that the within ....
l be presented for settlement and signa-
to the Honorable ....
the office of the clerk, ...
rough of .... *City of*
York, on the ...... day of ....,
, at ...... o'clock in the .... noon,
soon thereafter as counsel can be
rd.
ted, N.Y., ... 19......

Yours, etc.,

....
United States Attorney,
Attorney for ....

....
Attorney for ....

LC:hk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
FILED
JAN 26 1976
S. D. OF N. Y.

UNITED STATES ex rel.
LOUIS WOLFISH, et al.,

Relators,

-against-

UNITED STATES, et al,

Respondents.

AFFIDAVIT

75 Civ. 6000 (MEF)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

J. R. JOHNSON, being duly sworn, deposes and says:

1. I am an Associate Warden at the Metropolitan Correctional Center (the "MCC") and I submit thisaffidavit in order to elaborate further the efforts undertaken by the MCC in formulating MCC Policy Statement 7300.4B, dated January 17, 1976, regarding inmate visiting.

2. As set forth in paragraph 6 of Warden Taylor's affidavit, dated January 19, 1976, during the last week of October 1975, the warden and I began to formulate a comprehensive policy statement regarding inmate visiting. In doing so, we attempted to take into account the views of the inmates and visitors by discussing the matter with inmates, visitors and with the Unit Managers assigned to each of the floors at the MCC. A Unit Manager is responsible for the day-to-day operation of his or her floor, including the supervision of the inmates assigned to that floor; as such, the Unit Manager is the most senior staff member having almost daily contact with the inmates assigned to the floor.

3. The Unit Managers participated in the formulation of Policy Statement 7300.4B and were asked to reflect the views of inmates, as well as their own professional views. As conveyed through the Unit Managers, and my own discussions with inmates and visitors, the primary complaints were that the visiting rooms were too crowded; that because of the crowding visits often

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had to be cut to only 10 or 15 minutes; and that day-time visiting hours during the week were conflicting with court appearances and an opportunity to visit with children in school or family and friends who were working.

4. Taking into account these complaints, as well as our experience over the first 5-½ months of the MCC's operation as set forth in Warden Taylor's affidavit, Policy Statement 7300.4B was formulated for implementation on January 17, 1976.

5. Prior to its implementation, on Monday January 12, 1976, I distributed copies of Policy Statement 7300.4B (including the handout) to visitors waiting to be processed in the lobby of the M.C.C. At that time, I discussed the proposed changes with approximately 10 to 15 of those visitors to elicit further views and comments on this matter. In addition, on Tuesday, January 13, 1976, I met with approximately 35 to 40 inmates assigned to the 11th floor to discuss the proposed changes. At that time, each element of Policy Statement 7300.4B was discussed, including the provision concerning the number of authorized visitors and the preparation of a new visitors' list. (See para. 4, pp. 5-7 of Exh. C to the Taylor Affidavit.) I explained that under the new policy, the emphasis would be on making visits available for family members, although the inmate visiting list (consisting of a total of 10 individuals) would also provide for the inclusion of up to two friends at any one time (with an opportunity to change the names on the list). Some inmates expressed concern that an individual he might like to place on his visitors' list would not qualify as an authorized visitor under paragraph 4 of Policy Statement 7300.4B. I responded that in such cases, it has been the MCC policy for an inmate to submit a written request to the Unit Manager, stating the reasons for wanting this individual placed on his visitors'

LC;hk

list, and that such a request would be acted upon as promptly as possible by the Unit Manager.

6. Starting on Tuesday, January 13, 1976, copies of Policy Statement 7300.4B were distributed to the Unit Managers for posting on the bulletin boards on each floor where inmates live. In addition, the Unit Manager and caseworker on each floor were directed to discuss Policy Statement 7300.4B with the inmates during the course of the week and explain how the new rules and procedures would apply. On Thursday, January 15, 1976, visiting list forms were distributed by the Unit Managers and the inmates were requested to complete them in accordance with Policy Statement 7300.4B. On Friday, January 16, 1976 the completed forms were collected by the Unit Management staff for use commencing on January 17, 1976.

7. In addition to the efforts outlined in Warden Taylor's affidavit, dated January 19, 1976, the above-described activities were undertaken as part of the process in formulating, refining and explaining the terms of MCC Policy Statement 7300.4B.

J R Johnson
J. R. JOHNSON
Associate Warden

Sworn to this 23rd day of
January 1976

NOTARY PUBLIC

"AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 4004)"

LC:ik

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
FILED
JAN 23 1976
S. D. OF N. Y.

----------------------------------x

UNITED STATES OF AMERICA ex rel. :
LOUIS WOLFISH, et al., :
:
Relators, :
-against- :
UNITED STATES OF AMERICA, et al., :
Respondents. :

----------------------------------x

SUPPLEMENTAL AFFIDAVIT

75 Civ.6000(MEF)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

LARRY TAYLOR, being duly sworn, deposes and says:

1. I am submitting this supplemental affidavit in order to set forth that it is the policy of the MCC, and has been in the past and will be in the future, to apply the visiting regulations, including Policy Statement 7300.4B, in a flexible manner in order to accommodate, wherever possible, special circumstances, or as the Court has characterized them "hardship exceptions". (Transcript of Proceeding on January 20, 1976, p.21.)

2. Since the MCC opened on August 2, 1975, the written guidelines regarding inmate visiting has always contained provisions for flexibility to accommodate special circumstances of inmates and/or their visitors. For instance, paragraph 2 of the visiting guidelines in effect during August and September stated that upon prior approval special visits during weekday evenings would be permitted.* Similarly, the guidelines in

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*A copy of these guidelines is annexed hereto as Exhibit A.

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LC:ik

effect since October 5, 1975* also state that special visits during other than the normal visiting hours may be arranged through the Unit Managers. In addition, I have granted in the past, and have authorized my senior staff members to grant, upon a showing of special circumstances, other exceptions to these guidelines, including the number of visitors per visit, the length of visits and the individuals who would be permitted to visit with an inmate.

3. Policy Statement 7300.4B has attempted to enumerate, without necessarily limiting, the special exceptions which have been granted in the past and which we contemplate will arise in the future. For instance, paragraph 3, page 2 indicates that the time limitations on visits may be extended; paragraphs 4D and 4F, page 6 authorizes (with prior approval) group visits and visits by individuals who would not otherwise qualify for inclusion on an inmate's visiting list.

4. Thus, as has been our policy in the past, if an inmate or a visitor has "special circumstances" requiring a"hardship exception", he or she can submit

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*A copy of these guidelines is annexed hereto as Exhibit B.

LC:ik

such a request in writing to his or her Unit Manager or to me; as in the past, such requests will be considered and, where appropriate, granted.

LARRY TAYLOR
Warden
Metropolitan Correctional Center

Sworn to before me this

23rd day of January, 1976

NOTARY PUBLIC

"AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 4004)".

METROPOLITAN CORRECTIONAL CENTER
150 PARK ROW
NEW YORK, N. Y. 10007

1. **LOCATION OF THE M.C.C.**

The Metropolitan Correctional Center is located in lower Manhattan, near the United States Courthouse in an area known as Foley Square (Pearl & Park Row). Subways, buses and taxicabs provide adequate transportation to the immediate area. There are no institution parking facilities. A receptionist will direct you to the elevators and the appropriate floor where you will visit.

2. **VISITING HOURS**

Visiting with inmates at the M.C.C. is permitted on MOnday through Friday from 11:00 AM to 3:30 PM and on weekends and holidays from 9:00 AM to 3:00 PM. Special visits on weekdays from 4:30 PM to 6:30 PM must be approved in advance by Unit Managers. This period is also encouraged for attorney visits.

3. **VISITING LIMITATIONS**

Because of space limitations, it may be necessary to terminate visits when overcrowding occurs.

4. **VISITING REGULATIONS**

All visits will be conducted in a dignified and acceptable manner. Rude and unbecoming conduct will mean possible termination of the visit. Couples may embrace at the beginning of the visit and upon its completion. We ask that inappropriate physical contact be avoided during the visit. Parents and guardians are completely responsible for the conduct and actions of children.

5. **ARTICLES AND MONEY IN VISITING AREAS**

No articles or money may be given directly to the inmate. Visitors may deposit funds (American currency only) for an inmate's account with the visiting room officer. No other items will be accepted. MOney sent by mail should be in the for of U.S. Postal Money Orders. Articles such as books, magazines, newspapers will not be accepted from visitors. These items must be mailed directly from the publisher or place of purchase.

6. **TRAFFIC IN CONTRABAND ARTICLES**

Visitors will be asked to walk through a metal detector before visiting the floors. All handbags and containers are subject to inspection by x-ray machine. Visitors who attempt to introduce any unlawful article into this institution, or attempt to smuggle articles from the institution may be prosecuted under federal laws. "Whoever, contrary to any rule or regulation promulgated by the Attorney General, introduces or attempts to introduce into or upon the grounds of any federal, penal, or correctional institutiion, or takes or attempts to take or send therefrom anything whatsoever shall be imprisoned not more than ten years." - Title 18, U.S.C., Sec. 1791, C.87./ Food items or beverages are not permitted in the institution. If you have questions regarding visiting procedures, please feel free to ask the Lobby Officer or Receptionist for information.

Exh A

150 Park Row

Oct 5, 1975

1. **LOCATION OF M.C.C.**

The Metropolitan Correctional Center is located in lower Manhattan, near the United States Courthouse in an area known as Foley Square. Subways and buses provide adequate transportation to the immediate area. There are no institution parking facilities. A receptionist will direct you to the elevators and the appropriate floor where you will visit.

2. **VISITING HOURS**

The Metropolitan Correctional Center will make every effort to provide the maximum opportunity for inmates to visit with their families, for Attorneys to confer with their clients, and for appropriate agency personnel to visit inmates.

Because of limited visiting space and operational priorities, we must place some limits on the number and lengths of visits. In an effort to make maximum use of limited space, we have developed the following schedule. Based on past experience, we hope this schedule will allow us to get you to the visiting room faster and provide you with a more leisurely visit. The person you are visiting should advise you of his or her floor assignment, so you'll know where to visit.

Phone #791-9130

a) FIFTH FLOOR (5th) Unit Manager - Mrs. Scozzari - Ext.474 - 293 - 294
4:30 P.M. to 7:30 P.M. daily. 8:30 A.M. to 11:30 A.M. week-ends and holidays.

b) SEVENTH FLOOR (7th) Unit Manager - Mr. Haney - Ext.305 - 306- 480
12:30 PM to 3:30 P.M. daily 7 days a week

c) NINTH FLOOR (9th) Unit Manager - Mr. Echeandia - Ext. 339- 340 - 491
8:30 A.M. to 11:30 A.M. daily seven days a week.

d) ELEVENTH FLOOR (11th) Unit Manager - Mr. Matthews - Ext. 348 - 349 - 4
12:30 P.M. to 3:30 P.M. daily. 7 days a week.

3. **VISITING LIMITATIONS**

It may be occasionally necessary to terminate visits when overcrowding occurs. Under normal circumstances, each person at the M.C.C. may receive up to three visits per week for a maximum period of three hours. Special visits may be arranged through the Unit Manager, when it is determined that a visit is necessary during other than regular visiting hours. Arrangements should be made through the Unit Manager and the person being visited.

We hope you enjoy your visit at the M.C.C. If you have any question, please bring them to our attention.

Exh B

4. **ATTORNEY VISITS**

Attorneys are encouraged to visit their clients between 4:30 P.M. and 6:30 P.M. daily. Special arrangements have been made for Attorney conferences on the 9th Floor. Attorneys may also visit their clients, using the same hours and accommodations afforded families. Attorneys requesting visits at other times must contact the Unit Manager or Case Manager to make the necessary arrangements.

5. **VISITING REGULATIONS**

For the comfort of all visitors, we request your cooperation in the following areas. Couples may embrace at the beginning of the visit and upon its conclusion. We ask that inappropriate physical contact be avoided during the visit. We also ask that parents or guardians be responsible for the conduct and actions of children. In respect for the rights of non-smokers, we request that all persons avoid smoking in elevators and visiting areas. Disagreements with regulations should be taken up with the Administration either by phone or letter. Rude or inappropriate conduct should be avoided in the visiting rooms. Failure to comply with this request could result in a loss of visiting privileges.

6. **ARTICLES AND MONEY IN VISITING AREAS**

No articles or money may be given directly to the person your visiting. Visitors may deposit funds (American currency only) for an inmate's account with the visiting room officer. No other items will be accepted. Money sent by mail should be in the form of U. S. Postal Money Orders. Articles such as books, magazines, newspapers will not be accepted from visitors. These items must be mailed directly from the publisher or place of purchase.

7. **TRAFFIC IN CONTRABAND ARTICLES**

For your convenience and protection against loss of personal property, we'd appreciate it if you'd not bring food, drugs, knives or other devices used for self-protection to the institution. Visitors will be asked to walk through a detector before visiting the floor. All handbags and containers are subject to inspection by an x-ray machine. Visitors who attempt to introduce any unlawful articles into this institution, or attempt to smuggle articles from the institution may be prosecuted under Federal Laws. "Whoever, contrary to any rule or regulation promulgated by the Attorney General, introduces or attempts to introduce into or upon the grounds of any Federal, penal or correctional institution, or takes or attempts to take or send therefrom anything whatsoever shall be imprisoned not more than ten years- Title 18, U.S.C., Sec. 1791, C. 87." Food items or beverages are not permitted in the institution. If you have any questions regarding visiting procedures, please feel free to ask the lobby officer or Receptionist for information.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.
LOUIS WOLFISH, HELEN ROMERO,
CHARMAINE ROBINSON, MARYANNE
CALLAHAN, GERALDINE HARKER,
FRANCIS WOODS, DANA DYNES,
WILLIE S. McCARTHA, ESTELLA
FERNANDEZ, MARGARET RUSSELL,
RUTH SMITH, CYNTHIA EDWARDS,
BIRCHEL L. CARSON, SHERMAN
GREENE, MILDRED SKEETE, MARY
JORDAN, DORIS TORRS, CARMEN
ESTRADA, JEREMIAH O'SULLIVAN,
MAXIMA VIDAL ORTIZ, ANTHONY
VICTORY, JANET FALLEY, GORDON
HAGEN, GARRY LEE, LINDA SESSOMS,
et al.,

Relators,

-against-

THE HONORABLE EDWARD LEVI,
Attorney General of the United
States;

NORMAN CARLSON, Director, U.S.
Bureau of Prisons; and

LARRY TAYLOR, Warden, Metro-
politan Correctional Center,
et al.,

Respondents.

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

75 Civ. 6000 MEF

Upon the amended petition and the affidavit of Michael Young annexed hereto, it is hereby

ORDERED, that the respondents show cause before this Court at Room 506 on January 20, 1976, at 9:00 o'clock a.m., why a preliminary injunction should not be issued herein, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining the respondents, their agents and employees, pending a final hearing and determination of this action, from reducing the number of visits

Best Copy Available

from family and friends which an inmate at MCC may have below its current level of three visits per week, or from reducing or altering the schedule of family visiting hours from its current schedule of 8:30 to 11:30 a.m. for Floors Two, Five, and Nine, and 12:30 to 3:30 p.m. for Floors Three, Seven, and Eleven, seven days a week; and it is further

the change having been announced ex parte, without consulting the court or even the U.S. Attorney notwithstanding the pendency of this case drawing into question the adequacy of existing visiting hours

MEF

ORDERED, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, that the respondents are temporarily restrained from reducing or altering the number of visits or the schedule of visiting hours from the current schedule, as described in the preceding paragraph, pending the hearing and determination of the application for a preliminary injunction; and it is further

ORDERED, that service of this order, together with a copy of the papers hereto attached, on or before 5:00 o'clock p.m. on January 16, 1976, be deemed sufficient notice.

Dated: New York, New York
January 16, 1976

/s/ Marvin E. Frankel
MARVIN E. FRANKEL,
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.
LOUIS WOLFISH, HELEN ROMERO,
CHARMAINE ROBINSON, MARYANNE
CALLAHAN, GERALDINE HARKER,
FRANCIS WOODS, DANA DYKES,
WILLIE S. McCARTHA, ESTELLA
FERNANDEZ, MARGARET RUSSELL,
RUTH SMITH, CYNTHIA EDWARDS,
BIRCHEL L. CARSON, SHERMAN
GREENE, MILDRED SKEETE, MARY
JORDAN, DORIS TORRES, CARMEN
ESTRADA, JEREMIAH O'SULLIVAN,
MAXIMA VIDAL ORTIZ, ANTHONY
VICTORY, JANET FALLEY, GORDON
HAGEN, GARRY LEE, LINDA SESSOMS,
_et al._,

Relators,

-against-

THE HONORABLE EDWARD LEVI,
Attorney General of the United
States;

NORMAN CARLSON, Director, U.S.
Bureau of Prisons; and

LARRY TAYLOR, Warden, Metropolitan Correctional Center,
_et al._,

Respondents.

AFFIDAVIT

75 Civ. 6000 MEF

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MICHAEL YOUNG, being duly sworn, deposes and says:

I am an attorney associated with the Federal Defender Services Unit of The Legal Aid Society, assigned by this Court to represent the relators and relator class in this proceeding. I make this affidavit in support of an application for an order to show cause why this Court should not issue a preliminary injunction, pursuant to Rule 65, Federal Rules of Civil Procedure, enjoining the respondents and their agents and employees from reducing the number of visits from family and friends which an inmate at MCC may have below its current level of three visits per week, or from reducing or altering the schedule of family visiting hours from its current schedule of 8:30 to 11:30 a.m. for Floors Two, Five, and Nine, and 12:30 to 3:30 p.m. for Floors Three, Seven, and Eleven, seven days a week, and for an order temporarily restraining respondents from reducing or altering the number of visits or the schedule of visiting hours from the current schedule pending the hearing and determination of the application for a preliminary injunction.

The factual information in this affidavit is based on documents provided by officials at MCC and conversations I have had with officials at MCC, inmates at MCC, and representatives of the United States Attorney's office for the Southern District of New York, attorneys for respondents.

When MCC first opened, each inmate was allowed to have five visits* from family and friends (hereinafter called "visits") each week. I have been unable to learn what the schedule of visiting hours was at that time.

On or about October 5, 1975, the respondents instituted a new series of visiting regulations, limiting the number of visits to three per week and scheduling the visiting hours as follows:

Floors Two, Five, and Nine: 8:30 to 11:30 a.m. seven days per week;

Floors Three, Seven, and Eleven: 12:30 to 3:30 p.m. seven days per week.

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*Upon information and belief, the number of persons who may participate in any one visit has never been expressly defined.

Upon information and belief, the length of each visit was never expressly limited, except by the length of time the visiting room was open and conditions of overcrowding.

On or about November 28, 1975, the original pro se petition was filed in this proceeding. On January 12, 1976, the amended petition was filed. Both petitions alleged that the restrictions on visiting at MCC were unconstitutional and unlawful.

On or about January 13, 1976, notices were posted in each of the residential units of MCC, by the respondents or their representatives, advising the inmates that, as of January 17, 1976, more restrictive visiting regulations would be instituted. As of that date, inmates would be permitted only two one-hour visits per week, and each floor would have visiting periods only two evenings during the week and one day each weekend. The schedule of visiting hours for each floor is to be as follows:

Floors Three, Seven, and Eleven: 5:30 to 8:00 p.m. Tuesday and Thursday; 8:30 a.m. to 3:00 p.m. Saturday;

Floors Two, Five, and Nine: 5:30 to 8:00 p.m. Wednesday and Friday; 8:30 a.m. to 3:00 p.m. Sunday.

A copy of the form provided by respondents to visitors announcing these new restrictions is attached hereto as Exhibit A.

The new visiting procedures at MCC are more restrictive than those in many other Federal and state institutions. For example, I have been advised by officials at Lewisburg Federal Penitentiary that visiting is permitted from 8:00 a.m. to 3:00 p.m. seven days per week, and inmates are allowed an unlimited number of visits. I have been advised by officials at the United States Penitentiary at Terre Haute, Indiana, that visiting is permitted from 8:30 a.m.

to 4:00 p.m. five days a week (Wednesday through Sunday) and that inmates are permitted as many visits as they wish provided they do not exceed 24 "points" each month. Each hour of weekday visiting counts as one "point" and each hour of weekend visiting counts as two "points." I have been advised by officials at the Chicago MCC that all inmates except those in punitive segregation are permitted to receive visits from 2:00 p.m. to 9:30 p.m. at least five days per week (Thursday through Monday). Inmates are permitted as many visits as they wish, provided they do not exceed six hours of visiting per week.

The temporary restraining order and preliminary injunction should be issued because relators are likely to succeed on the merits of this issue in this proceeding.

Some restriction on the right to meet and communicate with other people is inherent in the confinement of inmates. They may not leave the jail building to associate with friends, family, or others. They can see no one who does not travel to the jail to see them.

However, respondents have also imposed severe limitations upon relators' access to those who wish to see them. Visiting is restricted to small numbers of people and brief periods of time on days which are inconvenient for a great many visitors.

The new visiting restrictions instituted at MCC by respondents are an oppressive interference with relators' marital, parental, and personal relationships, constituting a cruel punishment, in violation of their rights under the Fifth and Eighth Amendments. The new regulations violate relators' rights to associate, in violation of their rights under the First Amendment. Insofar as the new regulations are more restrictive than those in many other Federal and state institutions, they violate relators' rights to equal protection under the due process clause of the Fifth Amendment. For pretrial detainee relators, the new regulations constitute a deprivation of liberty without due process of law, in violation of the Fifth Amendment. For all relators, the new regulations constitute a violation of their rights under the due process clause of the Fifth Amendment to be held under the least restrictive conditions consonant with the security of the institution.

In other, but related, contexts, the Supreme Court has repeatedly emphasized the basic sanctity of the family relationship. Loving v. Virginia, 388 U.S. 1, 12 (1966); Meyer v. Nebraska, 262 U.S. 390, 399 (1923); Prince v. Massachusetts, 321 U.S. 158, 166 (1944). To permit limitations on those relationships where less restrictive options are available is inconsistent with basic constitutional principles. See Shelton v. Tucker, 364 U.S. 479, 488-489 (1960). Therefore, visitational rights may not be substantially impaired, as at MCC, on grounds of mere expedience.

For this reason, courts have increasingly begun to scrutinize jail visiting practices, have declared unconstitutional a number of restrictions, and have required substantial changes in visiting procedures. In Jones v. Wittenburg, 330 F.Supp. 707 (N.D.Ohio 1971), the court ordered the construction of new visiting facilities and required that visiting include "daily visiting hours, both in the daytime and in the evening, and especially upon holidays and weekends." Id., 330 F.Supp. at 717. In Brenneman v. Madigan, 343 F.Supp. 128 (N.D.Cal. 1972), the court adopted the above-quoted language of Jones, adding that an inmate "should be able to visit with whomever he pleases, especially his children, for substantial periods of time each week." Id., 343 F.Supp. at 141 (emphasis added). Accord, Bell v. Wolff, CV 72-L-227, p.6 (D.Neb., Nov. 7, 1973); see also Mabra v. Schmidt, 356 F.Supp. 620, 630-631 (W.D.Wis. 1973). In Jones v. Sharkey, C.A. No. 49[illegible]8 (D.R.I., June 7, 1972), the court held that the right to visit with one's children was fundamental, and enjoined prison authorities from denying that right to pretrial detainees, noting that sentenced prisoners within the same institution were already permitted to see their children, and that detainees should have at least the same right. See also Hamilton v. Love, 328 F.Supp. 1128 (W.D.Va. 1971), requiring "reasonable visiting hours" (Interim Decree of June 22, 1971, ¶7B); Stanley v. Walker, Civ. Act. No. 74-1229 (E.D.Pa., June 4, 1974).

I have requested that the attorneys for respondents retain the current visiting regulations pending the litigation of this proceeding, and they have declined to do so.

I hereby certify that I have given oral notice to attorneys for respondents of my intention to seek a preliminary injunction on this issue.

Since the new regulations are scheduled to go into effect on January 17, 1976, relators will suffer irreparable harm through the violation of their constitutional rights as set forth above unless a temporary restraining order is issued pending the decision of this Court as to whether to grant a preliminary injunction. Inmates whose families or friends are unable to visit on the one day of the weekend on which their floor has visiting hours will be denied their rights to such visits this weekend. Inmates whose spouses must care for young children or are otherwise prevented from visiting during the weekday evenings will be denied their right to such visits during next week. Inmates who wish to have three visits during the next week will be denied their right to the third visit. Inmates who wish to have visits of a longer duration than one hour will be denied such longer visits during the next week. Given the importance of these visits to the inmates and their constitutional right to have such visits, the institution of the new visiting restrictions would cause serious and irreparable harm. The normal notice requirements for an application for a preliminary injunction should therefore be dispensed with in this instance, and a temporary restraining order issued pending litigation of the request for a preliminary injunction.

Relators are not requesting that this Court order the respondents to take affirmative action, but only to maintain the status quo and not to impose even more restrictive visiting regulations during the litigation of this action.

WHEREFORE, it is respectfully requested that this Court order the respondents to show cause why the Court should not issue a preliminary injunction enjoining the respondents and their agents or employees from instituting the new visiting regulations, and that the Court temporarily restrain the respondents from instituting the new visiting regulations pending the hearing and determination of the motion for a preliminary injunction.

MICHAEL YOUNG

Sworn to before me this
day of January 1976

Notary Public

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VISITORS GUIDE

The Metropolitan Correctional Center wishes to extend a sincere welcome to all visitors. We have attempted to establish a visiting program which we hope will be pleasant and convenient for everyone. The schedule which is printed on the last page provides a more equitable distribution of visiting time and also makes use of all possible space and staff for visiting. The following are a few simple rules which we hope you'll read and follow. If you have any questions please feel free to ask any staff member. If you have any complaints, we'd appreciate your written comments in the form of a letter to the Warden.

• SMOKING

Because visiting rooms are public areas and somewhat confined; we ask that you not smoke during your visit. Smoking endangers the health of all visitors including children and nonsmokers.

• CONTRABAND

Because of the nature of our facility, certain items are not allowed in the visiting room. Drugs ... medication ... alcohol ... beverages ... food ... weapons or objects that could be used as weapons are not permitted. Each visitor will be searched and contraband items will be confiscated or withheld at the desk. It is advisable to leave items of this nature at home. At this time we cannot be held responsible for items left in our lobby.

• REGISTRATION

All visitors must register at the desk. Persons who have not been approved as visitors will not be admitted. Permission for special visits must be obtained in advance. All visitors going beyond the Main Lobby will be stamped with an invisible identification symbol. The identification is changed daily to ensure accurate identification of visitors upon departure. Your departure from the visiting room will be delayed until the person you're visiting is returned to the living unit. Your invisible identification will also be checked with special equipment before you leave. These are necessary requirements and we appreciate your cooperation. You are authorized two visits per week lasting one hour each in duration.

Best Copy Available

- **VISITING ROOM GROUND RULES**

Visiting periods are limited to one hour so that we can accommodate all the people who arrive for visits on a daily basis. The visiting room officer will record the time your visit starts and remind you when its over. Because of reoccurring problems with contraband, we do not provide rest room facilities in the visiting rooms. We might suggest that your children pay a visit to facilities in the first floor lobby prior to starting the visit.

Family members and friends are allowed to embrace upon arrival and departure from the visiting rooms. During the visit however we ask you not to engage in any physical contact with the exception of hand holding. Though we're not necessarily prudes, we want the visiting room to be an enjoyable place for person's of all ages. From experience, we have also learned that excessive physical contact leads to increased problems with contraband.

- **ELEVATORS AND DOORS**

Elevators are controlled by our Control Center and cannot be controlled by passengers. You can speak to the Control Center by simply talking once you're in the car. All elevators are monitored. Entrance to and from elevators are also monitored by motion sensitive cameras. Our Control Center can see you and hear you when ever you're in these areas. Doors to the visiting room are also controlled by our Control Center. The officer in the visiting room does not have keys or the responsibility of opening this door. Please be patient if there is sometimes a delay. Our no smoking regulation begins once you step foot on the elevator. Ash trays are provided by each elevator for your convenience.

- **VIOLATION OF REGULATIONS**

Violation of regulations pertaining to visits will result in disruption of visits and could lead to prosecution of the visitor for violation of Federal Laws.

We hope your visits will be enjoyable and comfortable. Your cooperation will help things run more smoothly so please abide by the regulations we've developed and come back again.

A 172

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A173

VISITING SCHEDULE

LIVING UNITS	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
11th FLOOR			5:00 P.M. ≡ 8:30 P.M.		5:00 P.M. ≡ 8:30 P.M.		[illegible] A.M. ≡ [illegible] P.M.
9th FLOOR	9:00 A.M. ≡ 3:00 P.M.			5:00 P.M. ≡ 8:30 P.M.		5:00 P.M. ≡ 8:30 P.M.	
7th FLOOR			5:00 P.M ≡ 8:30 P.M		5:00 P.M. ≡ 8:30 P.M.		[illegible] A.M. ≡ [illegible] P.M.
5th FLOOR	9:00 A.M. ≡ 3:00 P.M.			5:00 P.M. ≡ 8:30 P.M.		5:00 P.M. ≡ 8:30 P.M.	
3rd FLOOR			5:00 P.M. ≡ 8:30 P.M.		5:00 P.M. ≡ 8:30 P.M.		[illegible] A.M. ≡ [illegible] P.M.
2nd FLOOR	9:00 A.M. ≡ 3:00 P.M.			5:00 P.M. ≡ 8:30 P.M.		5:00 P.M. ≡ 8:30 P.M.	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel. LOUIS WOLFISH, HELEN ROMERO, CHARMAINE ROBINSON, MARYANNE CALLAHAN, GERALDINE HARKER, FRANCIS WOODS, DANA DYNES, WILLIE S. McCARTHA, ESTELLA FERNANDEZ, MARGARET RUSSELL, RUTH SMITH, CYNTHIA EDWARDS, BIRCHEL L. CARSON, SHERMAN GREENE, MILDRED SKEETE, MARY JORDAN, DORIS TORRS, CARMEN ESTRADA, JEREMIAH O'SULLIVAN, MAXIMA VIDAL ORTIZ, ANTHONY VICTORY, JANET FALLEY, GORDON HAGEN, GARRY LEE, LINDA SESSOMS, et al.,

Relators,

-against-

THE HONORABLE EDWARD LEVI, Attorney General of the United States;

NORMAN CARLSON, Director, U.S. Bureau of Prisons; and

LARRY TAYLOR, Warden, Metropolitan Correctional Center, et al.,

Respondents.

SUPPLEMENTAL AFFIDAVIT

75 Civ. 6000 MEF

STATE OF NEW YORK } ss.:
COUNTY OF NEW YORK }

MICHAEL YOUNG, being duly sworn, deposes and says:

I am an attorney associated with the Federal Defender Services Unit of The Legal Aid Society, assigned by this Court to represent the relators and relator class in this proceeding. I make this affidavit in support of an application for a preliminary injunction, pursuant to Rule 65, Federal Rules of Civil Procedure, enjoining the respondents and their agents and employees from reducing the number of visits from family and friends which an inmate at MCC may have below its current level of three visits per week, or from reducing or altering the schedule of family visiting hours from its current schedule of 8:30 to 11:30 a.m. for Floors Two, Five, and Nine, and 12:30 to 3:30 p.m. for Floors

Three, Seven, and Eleven, seven days a week, or from reducing the number of persons whom an inmate can put on his visiting list below ten or limiting the number of those ten persons who may be friends rather than relatives of the inmate.

The factual information in this affidavit is based on conversations I have had with inmates at MCC.

Prior to January 15, 1976, the inmates at MCC were permitted to name six persons, either friends or relatives, who then became the only six persons who could visit that inmate.

On or about January 15, 1976, the inmates were advised by the respondents that they would have to provide a new list of names of ten desired visitors. In preparing these lists, the inmates were permitted to increase the number of relatives who could visit to eight. However, the number of visitors who were not related to the inmate was reduced from a maximum of six to two.

Inmates at MCC were advised that the new restrictions on the number of visits and visiting hours were being imposed because of staffing problems at MCC.

WHEREFORE, on the basis of the information provided in the application for an order to show cause, in this affidavit, and in the amended petition and other papers and proceedings in this case, it is respectfully requested that this Court grant a preliminary injunction, enjoining respondents from enforcing the new visiting restrictions.

MICHAEL YOUNG

Sworn to before me this
19th day of January, 1976

Notary Public

VJT:[illegible]
M-1252

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -x

LOUIS R. WOLFISH, et al., :

Plaintiffs, :

- v - : **AFFIDAVIT**

UNITED STATES OF AMERICA, : 75 Civ. 6000 (MEF)
EDWARD H. LEVI, et al.,

Defendants. :

- - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

LARRY TAYLOR, being duly sworn, deposes and says:

1. I am the Warden at the Metropolitan Correctional Center, the federal detention center in New York. I make this affidavit in opposition to the petitioners' application for an order to show cause and in support of defendants' motion to dismiss this case. To the extent possible, we are trying to respond to Wolfish's allegations in the order in which he states them in his petition.

2. The MCC was designated to accommodate 449 prisoners. However, the inmate population of the MCC has risen to 600 inmates because of an increase in crime generally (and a somewhat corresponding increase in arrests) and because of the number of prisoners that are here awaiting disposition of writs. No "course of action" was taken to deliberately increase the population at MCC as implied in paragraph 7 of the petition. In fact some inmates such as Wolfish have sought court orders seeking to prevent their transfer to their permanent places of incarceration in order to litigate "conditions of confinement" cases which could more appropriately have been brought in another jurisdiction.

[illegible]
-1259

3. The MCC is anticipating that its inmate population will increase to 620 and hence has begun placing an additional bed in some rooms to accomodate a second inmate in rooms which originally contained only one bed.

4. There are ~~469~~ 374 single rooms at the MCC. Approximately 120 rooms have now been designated for 2 inmates; only prisoners who will be at the MCC for short periods of time are designated for 2-inmate rooms.

5. All rooms in which an extra bed has been placed are approximately 80 square feet large and are used for sleeping pruposes only; other areas outside these rooms are used for work, recreation, eating and other activities.

6. The extra bed placed in such rooms consists of the top half of a bunk bed and hence no additional floor space has been taken up as a result of the addition of a second bed.

7. In no way is the health, safety and welfare of any prisoner endangered by placing 2 inmates in these rooms. The rooms can accomodate two prisoners comfortably. The claims made in paragraph 8 of the petition are unsupported and entirely frivolous.

8. No prisoner at the MCC, to my knowledge, has ever been transferred because he instituted a habeas corpus proceeding complaining of conditions at the MCC. It is against the policy of the Bureau of Prisoners to transfer a prisoner because he filed a habeas corpus petition and any action contravening this policy would be immediately corrected. It is our policy to inform the Court of our intention to transfer prisoners to permanent places of confinement previously designated by the Attorney General when it is apparent that a prisoner's petition is motivated by a desire

-1259

to stay at the MCC when the claims raised are more appropriately litigated in the jurisdiction of the prisoner's designated permanent place of confinement. By this policy we try to avoid inappropriate burdens being placed upon the Bureau of Prisons and the District Courts which are in "heavy sentencing" areas such as the Southern District of New York. We try to avoid the problem of a prisoner filing repeated petitions in this district although he is to be here only a day or two.

9. The windows at the MCC are breakable although they are bullet-proof. Since the MCC opened, five windows have been broken. The cost to replace a window is approximately $1500 per window. Because of this expense, windows in areas where there have been escape attempts or where escape attempts are probable, and windows in areas where problem prisoners are held are being ~~covered~~ fitted with bars; the bars are designed to be as inconspicuous as possible. The claim that bars are being installed to demoralize and depress prisoners is absurd.

10. Each prisoner is given the opportunity to exercise outdoors eight to ten hours per week. Some of this exercise occurs after sunset in a well-lighted area. The windows at the MCC are generally sealed, but a modern ventillating system insures adequate fresh air throughout the building.

11. All mail, incoming and outgoing, is distributed or collected and sent on a daily basis at the MCC; minor delays not exceeding 24 hours occur at times on holidays and weekends. It is against the Bureau of Prisons policy to retain or withhold mail; this policy is adhered to at the MCC.

12. Any prisoner who is subject to the disciplinary action of "administrative detention" or "segregation" (referred to in the petition as "deadlock" or "lockup") is given a written memorandum of the reasons therefore and the punishment involved. In addition, segregation requires a full committee hearing consisting of prison staff members and the subject of such action is given the opportunity to call and confront witnesses. No counsel is provided for these administrative disciplinary actions.

13. It is the practice at the MCC to open all incoming and outgoing mail for the purpose of detecting escape plots, smuggling of contraband, or other similar problems. Mail going to an attorney marked "attorney mail - do not open" is not opened. Similarly mail going to governmental officials, judges, court clerks, etc. which is marked by the prisoner as "PMB" (prison mail box) is not opened. No mail is censored or copied. The Bureau of Prisons' policy statement is attached hereto as Exhibit A. This policy is followed at the MCC.

14. No "conjugal visits" are permitted within the MCC although where appropriate certain prisoners have been granted furloughs in our discretion.

15. Access to legal books in the MCC law library is provided to prisoners who sign request sheets. The books are then brought to the prisoners. This procedure and the contents of the MCC law library is contained in Exhibit B.

16. Prisoners are permitted to bring legal papers, files and records with them to the visiting room.

17. Clergymen visits to prisoners are permitted at all times. With respect to the petitioner Louis R. Wolfish

Hale
1259

[illegible] that will be
("Wolfish") ~~as~~ many of his visitors ~~say that they are~~ clergymen [illegible] ~~that~~ the MCC ~~has~~ had to restrict clergy visits to Wolfish by having him designate ~~one~~ clergyman who would qualify for special clergy visiting privileges. Any other visitor for Wolfish whether or not clergy can visit Wolfish during the regular visiting hours.

18. Rabbi Potasnik is on contract to come into the MCC once a week at which time Jewish prisoners may meet with him individually or request other religious services. Religious services for Jewish prisoners are provided on an equal basis as for other religions. In this regard, Wolfish has filed a petition of habeas corpus (75 Civ. 5330 (CHT)) a quorum minyan with a Torah Scroll, a special Jewish religious service on a daily basis. Wolfish may conduct such service with other inmates who wish to participate but the MCC has not brought in other persons in order to satisfy the quorum requirements.

19. There is no chapel at the MCC; religious services are conducted on the individual floors of the MCC.

20. The MCC has rehabilitation programs for creative writing, English and Spanish language lessons as well as other programs consistent with a short term detention center. In this regard the average stay of a prisoner at the MCC is 28 days.

21. Youthful offenders are separated from other offenders to the fullest extent possible at the MCC.

22. Prison officials and employees, including myself, are called upon to work more than eight hours per day and on weekends from time to time. This has no effect on the petitioners. Inmates are not required to work more than eight hours per day; some inmates are required to work on weekends, e.g., kitchen help.

Best Copy Available

23. "Pre-conviction" inmates are separated from "Post-conviction" inmates to the fullest extent possible at the MCC.

24. Visitors, whether attorneys or otherwise, must be processed before they visit inmates; this process includes the filling out of a form and passing through a metal detector. The MCC attempts to facilitate visitors, including attorneys and clergy, to the fullest extent possible so that waiting time is kept to a minimum usually under 20 minutes.

25. Prisoners have access to typewriters on a daily basis. Electric shavers are not permitted at the MCC in order to avoid arguments between prisoners who have such equipment and those who do not, and to prevent theft.

26. The policy implemented at the MCC is to give each prisoner a medical examination as soon as possible after he or she enters the MCC. There is a gynecologist at the MCC whose services are available to those female inmates who need or desire such services.

27. The following number of pay telephones are available:

11th floor	6
9th floor	4
7th floor	2
5th floor	2
3rd floor	1
2nd floor	1

The above mentioned floors are the only floors on which prisoners reside.

28. Prisoners may not receive newspapers, books or magazines from visitors. The reason for this is that such articles can be sent to the prisoners through the mails which would eliminate the necessity of the MCC searching such articles for contraband or escape plans when visitors bring them in. Prisoners are always permitted to receive such articles through the mail from publishers, which in the ordinary course are examined (see paragraph 13, supra).

29. Copies of the rules and regulations that prisoners must follow are made available to all prisoners.

30. The procedure for borrowing books from the general library is the same as that for the law library.

31. A doctor, a gynecologist, a dentist, a psychologist, a psychiatrist and other medical personnel are available at the MCC.

32. No prisoner is deprived of an adequate amount of sleep whether or not he is making a court or other legal appearance.

33. Money is always permitted to be deposited in a prisoner's commissary account.

34. Visiting hours and limitation on visiting are shown on Exhibit C attached hereto.

35. At the option of the prisoner, laundry consisting of linen can be sent out or the prisoner can do it himself in the laundry facilities provided. No charge is made for either service. All other laundry of prisoners must be done in the laundry facilities provided at the MCC. No charge is made

36. All inmates working in the kitchen or the hospital are given a complete medical exam to determine if they are free from communicable diseases.

37. The "furlough policy" is stated in Exhibit D attached hereto.

38. Pest and rodent extermination services are provided on a regular basis.

39. Qualified dieticians and a qualified food administrator approve each meal served at the MCC for nutritional adequacy as well as for palatability, variety and other factors that are considered for menu preparation. Federal standards of nutrition are strictly adhered to for all food served at the MCC.

40. Sufficient showers and bathing facilities which are in close proximity to the sleeping rooms to accomodate all prisoners on a daily basis are provided on each residence floor at the MCC. Prisoners are encouraged to use these facilities on a daily basis.

41. Licensed barbers and beauticians are not available at the MCC, but equipment necessary for hair care equivalent to that which a licensed barber or beautician would provide, is available under certain conditions designated to insure security (since sharp instruments are involved).

Larry Taylor

LARRY TAYLOR

Sworn to before me this
1st day of December 1975

5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.
LOUIS WOLFISH, HELEN ROMERO,
CHARMAINE ROBINSON, MARYANNE
CALLAHAN, GERALDINE HARKER,
FRANCIS WOODS, DANA DYNES,
WILLIE S. McCARTHA, ESTELLA
FERNANDEZ, MARGARET RUSSELL,
RUTH SMITH, CYNTHIA EDWARDS,
BIRCHEL L. CARSON, SHERMAN
GREENE, MILDRED SKEETE, MARY
JORDAN, DORIS TORRES, CARMEN
ESTRADA, JEREMIAH O'SULLIVAN,
MAXIMA VIDAL ORTIZ, ANTHONY
VICTORY, JANET FALLEY, GORDON
HAGEN, GARRY LEE, LINDA SESSOMS,
et al.,

Relators,

-against-

THE HONORABLE EDWARD LEVI,
Attorney General of the United
States;

NORMAN CARLSON, Director, U.S.
Bureau of Prisons; and

LARRY TAYLOR, Warden, Metro-
politan Correctional Center,
et al.,

Respondents.

AFFIDAVIT

75 Civ. 6000 MEF

STATE OF NEW YORK } ss.:
COUNTY OF NEW YORK }

MICHAEL YOUNG, being duly sworn, deposes and says:

I am an attorney associated with the Federal Defender Services Unit of The Legal Aid Society, assigned by this Court to represent the relators and relator class in this proceeding. I make this affidavit in support of an application for a preliminary injunction, pursuant to Rule 65, Federal Rules of Criminal Procedure, enjoining the respondents and their agents and employees from reducing the number of visits from family and friends (hereinafter referred to as "visits") which an inmate at MCC may have below its current level of three visits per week; from reducing the length of such visits below its current maximum length of three hours each; from reducing the length of time which the visiting rooms are open on each floor below its current schedule of three hours per day, seven days per week, for floors three, seven, nine and eleven, and six hours per day on weekdays and three hours per day on weekends for floors two and five; or from altering the schedule of visiting hours from its current schedule of 8:30 to 11:30 a.m. seven days a week for floor nine, 12:30 to 3:30 p.m. seven days a week for floors seven and eleven, and 8:30 to 11:30 a.m. seven days a week and 4:30 to 7:30 p.m. on weekdays for floors two and five, except to enlarge that schedule; or from reducing the number of persons whom an inmate can put on his visiting list below ten or limiting the number of those ten persons who may be friends rather than relatives of the inmates.*

---

* The injunctive relief requested above has been modified to conform with the concessions made by Larry Taylor, Warden of MCC, in his affidavit of January 19, 1976, at 3, as to the current visiting regulations.

The only variation from Warden Taylor's description of the current visiting procedures which relators have added to the relief requested above is the addition of the requirement that persons housed on floor three (hospital and protective custody) are entitled to a minimum of three scheduled visiting hours per day. Warden Taylor, in his affidavit at 3, fn. 2, indicated that there were no scheduled visiting hours for these inmates, but rather that "special arrangements" were made for their visits. It is relators' position that these inmates are entitled, under Constitutional equal protection and due process protections, to at least the minimum number of scheduled visiting hours provided to other inmates at the institution.

The only clarification of Warden Taylor's description of current visiting regulations which relators have made in the relief requested above is that under current visiting procedures, each visit can last a maximum of three hours. Warden Taylor's affidavit was ambi-

(Continued on next page)

It is relators' position in requesting injunctive relief, that they would be irreparably injured by respondents' enforcement of the new visiting restrictions. Submitted herewith are affidavits from 92 inmates at MCC, members of the relator class, describing the irreparable injury each of them would suffer and requesting this Court to grant the preliminary injunction.

These affidavits were obtained in the following manner: a representative number of inmates were interviewed individually by counsel for relators, affidavits were prepared on the basis of their statement, and these affidavits were then signed and sworn to by each inmate in the presence of a notary public. The rest of the affidavits were obtained through the use of a form affidavit, setting forth the current and the proposed visiting regulations, and providing space for the inmate to explain how the new regulations would adversely affect him. On Wednesday and Thursday evenings, I met with inmates from various units of MCC in small groups, explaining the law suit, the temporary restraining order, and the affidavit to them. After I read the affidavit to each group, the individual inmates completed their affidavit, and signed and swore to the truth of its contents before me. Several of the inmates could not write English, and their affidavits were submitted in Spanish.

(Continued from last page) *. . . guous on this point, stating only that each inmate was "permitted three visits per week for a maximum period of three hours." He failed to clarify whether this was the maximum period for each visit, or for all visiting in a given week. If respondents contest the validity of this clarification, relators are prepared to prove through testimony that each visit was permitted to last a maximum of three hours, except when conditions of overcrowding or the closing of the visiting room required termination of the visit. It is relators' position that respondents are obliged to extend the visiting hours to deal with conditions of overcrowding, rather than shorten the length of a visit, in violation of relators' constitutional rights.

It is relators' position that these affidavits represent a cross section of the relator class. On the basis of the interviews I conducted, I represent to this Court my belief that, given sufficient time, I could obtain similar affidavits requesting the preliminary injunction from virtually all of the members of the relator class.

The principal irreparable injuries attested to in these affidavits can be grouped as follows:

(1) Most inmates normally receive three visits per week. The new restrictions would therefore deny them one of these visits each week. See, e.g., affidavits of -

Cross
Salas
Iarossi
Pagan
Lee, Y.
Victory
Ortiz
Rastelli
Armento
Rosenberg
Rivera
Hansen
Lucius
Marcus
Sostre

Thomas
Lee
Sutherland
Sautor
Ware
Rivera
Papa
Sanchez, A.
Falcone
Powell
Rizzieri
Desimone
Sacasas
Sanchez,
Indiviglio

(2) Many inmates have spouses or other visitors who must care for young children who must be fed and put to bed between 5:30 and 8:00 p.m. on weekdays. Since the new visiting regulations limit weekday visiting to these hours, may inmates would be denied visits from such persons. See, e.g., affidavits of -

Pernetti
Lowry
Saleh
Cezare
Pagan
Baur
Victory
Ortiz
Lucius
Indiviglio
Pugliese
Papa
Robinson
Mogaveno

Rizzieri
Desimone
Carauella
Sacasas
Hemlock
Damato
Thomas, G.
Thomas, P.
Marzoro
Sautor
Ware
Vega
Brown

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(3) Many inmates have spouses and other visitors who must care for young school-aged children. Such visitors can visit inmates during the current day-time visiting hours, while their children are in school, but could not visit under the new visiting regulations, which limit visiting to evenings and weekends, both of which are times when these visitors must look after their children. See, e.g., affidavits of -

Ruggiero
Burke
Palermo

(4) Many inmates have spouses and other visitors who must feed and care for elderly persons or families between 5:30 and 8:00 p.m. Since the new visiting regulations limit weekday visiting to these hours, many inmates would be denied visits from such persons. See, e.g., affidavits of -

Heitzner

(5) Many inmates have spouses, family and other visitors who live at some distance from MCC and must travel several hours to visit there. Since the new visiting regulations limit weekday visiting to evenings, such visitors could not return home from such a visit until late at night. Many inmates would therefore be denied visits from such persons. See, e.g., affidavits of -

Robinson, R.
Carauella
Ramsey
Lee
Robinson
Kaelin
Marzeno
O'Sullivan
Hope
Rodriguez
Miller
Lane
Shays

(6) Many inmates have spouses, family and other visitors who are afraid to be on the streets of this area of the city at night, because of the high rate of muggings and other street crimes. Under the new regulations, which restrict weekday visiting to evenings, inmates would be denied visits from these persons. See, e.g., affidavits of -

Sutherland
Metinez
Shaw
Kaelin
Rizzo
LoCicero
Shafiroff
Hope

Curtis
Rodriguez
Blume
Lane
Creeden
Pernetti
Cross
Lowery
Papa
Anderson
Mogaveno
Hemlock
Grandinetti
Cesare
Kelly
Pagan
Ruggiero
Armento
Palermo
Rosenberg
Powell
Rizzieri
McClean
Vane

(7) Many inmates currently have visits which last longer than one hour. Under the new visiting regulations, they would be denied such longer visits. See, e.g., affidavits of -

Rodriguez
Miller
Creeden
Pernetti
Ramsey
Cross
Pagan
Baur
Marcus
Vane

(8) Many inmates have spouses, family and other visitors who must come from other cities or from some distance to visit them. Under the new visiting regulations, such visitors would be deterred from traveling such distances for a visit which was limited to one hour. Inmates would therefore be denied visits from such persons. See, e.g., affidavits of -

Pearson
Presto
Grandinetti
Salas
Kelly
Sanchez
Pugliese
Papa
Lopez
Anderson
Miller

(9) Many inmates have few or no members of their immediate family living in the area, and therefore rely on visits from other relatives and persons unrelated to them. Under the new visiting regulations, limiting to two the names of such persons who an inmate could put on his visiting list, many inmates would be denied visits from such persons. See, e.g., affidavit of -

Marcus
Sostre

(10) Many inmates have more than two persons who are unrelated to them who have or would visit the inmate if permitted to do so. Under the new visiting regulations, inmates would be denied such visits.

Victory
Rosenberg
Marcus
Miller
Powell
Palermo
McCoy
Sostre
Falcone
Ramsey

Shaw
Simpom
Creeden
O'Sullivan
Vega

(11) Many inmates have spouses, family and friends who normally visit, or can only visit, on both days of the weekend. Under the new visiting regulations, limiting each floor to one day of visiting each weekend, inmates would be denied many such visits. See, e.g., affidavits of -

Sostre
Indiviglio
Miller
Vane
Metinez
Figueroa
Roach
Waiters
Simpson
Curtis
Vucos
Blume

(12) Some inmates have spouses, family and friends who work during all of the hours he could receive visits under the new visiting regulations. Such inmates would therefore be denied visits from such persons. See, e.g., affidavits of -

Palmer
Marcus
Anderson
Portela
Rizzieri
McClean
Robinson
McCoy
Bexton
Miller
Valles
Hemlock
Ortega

Other individual reasons why the enforcement of the new visiting regulations would cause irreparable injury are set forth in individual inmate affidavits.

WHEREFORE, it is respectfully requested that this Court grant the preliminary injunction, enjoining respondents, their agents and employees from enforcing the new visiting restrictions.

MICHAEL YOUNG

Sworn to before me this
23rd day of January, 1976

Notary Public

[illegible]
[illegible] York
[illegible]
[illegible] 1977

MARVIN E. FRANKEL, U.S. District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
FILED
SEP 15 1976
S. D. OF N. Y.

2

UNITED STATES OF AMERICA ex rel. LOUIS WOLFISH, HELEN ROMERO, CHARMAINE ROBINSON, MARYANNE CALLAHAN, GERALDINE HARKER, FRANCIS WOODS, DANA DYNES, WILLIE S. McCARTHA, ESTELLA FERNANDEZ, MARGARET RUSSELL, RUTH SMITH, CYNTHIA EDWARDS, BIRCHEL L. CARSON, SHERMAN GREENE, MILDRED SKEETE, MARY JORDAN, DORRIS DORRS, CARMEN ESTRADA, JEREMIAH O'SULLIVAN, MAXIMA VIDAL ORTIZ, ANTHONY VICTORY, JANET FALLEY, GORDON HAGEN, GARRY LEE, LINDA SESSOMS, *et al.*,

Relators,

-against-

THE HONORABLE EDWARD LEVI, Attorney General of the United States;

NORMAN CARLSON, Director, U.S. Bureau of Prisons; and

LARRY TAYLOR, Warden, Metropolitan Correctional Center, *et al.*,

Respondents.

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

75 Civ. 6000 MEF

Upon the amended petition, the prior proceedings in this case, and the affidavit of Michael Young annexed hereto, it is hereby

ORDERED, that the respondents show cause before this Court ~~at~~ Room [illegible] on Sept. 24, 1976, at 9:30 [illegible] o'clock [illegible].m., why a preliminary injunction should not be issued herein, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining the respondents, their agents and employees, pending a final hearing and determination of this action, from restricting or permitting restriction of the number of telephones or the

(30)

scope of telephone services currently available to persons confined at MCC; and it is further

ORDERED, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, that the respondents are temporarily restrained from restricting or permitting restriction of the number of telephones or the scope of telephone services currently available to persons confined at MCC pending the hearing and determination of the application for a preliminary injunction; and it is further

urce
lade;
MEF

ORDERED, that service of this order, together with a copy of the papers attached hereto, on or before ____:____ __.m. on __________________, 1976, be deemed sufficient notice.

Dated: New York, New York
September 14, 1976

5:10 P.M.

Marvin E. Frankel

MARVIN E. FRANKEL
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel. LOUIS WOLFISH, HELEN ROMERO, CHARMAINE ROBINSON, MARYANNE CALLAHAN, GERALDINE HARKER, FRANCIS WOOLS, DANA DYNES, WILLIE S. McCARTHA, ESTELLA FERNANDEZ, MARGARET RUSSELL, RUTH SMITH, CYNTHIA EDWARDS, BIRCHEL L. CARSON, SHERMAN GREENE, MILDRED SKEETE, MARY JORDAN, DORRIS DORRS, CARMEN ESTRADA, JEREMIAH O'SULLIVAN, MAXIMA VIDAL ORTIZ, ANTHONY VICTORY, JANET FALLEY, GORDON HAGEN, GARRY LEE, LINDA SESSOMS, et al.,

Relators,

-against-

THE HONORABLE EDWARD LEVI, Attorney General of the United States;

NORMAN CARLSON, Director, U.S. Bureau of Prisons; and

LARRY TAYLOR, Warden, Metropolitan Correctional Center, et al.,

Respondents.

AFFIDAVIT

75 Civ. 6000 MEF

STATE OF NEW YORK } ss.:
COUNTY OF NEW YORK }

MICHAEL YOUNG, being duly sworn, deposes and says:

I am an attorney associated with the Federal Defender Services Unit of The Legal Aid Society, assigned by this Court to represent the relators and relator class in this proceeding. I make this affidavit in support of an application for an order to show cause why this Court should not issue a preliminary injunction, pursuant to Rule 65, Federal Rules of Civil Procedure, enjoining the respondents and their agents and employees from restricting or permitting restriction of the number of telephones or the scope of telephone services currently available to persons confined at MCC, and for an order temporarily restraining respondents from restricting or permitting restriction of the number of telephones or the scope of telephone services currently available to persons confined at MCC pending the hearing and determination of the application for a preliminary injunction.

The factual information in this affidavit is based on documents provided by relators and respondents and conversations I have had with inmates at MCC and representatives of the U.S. Attorney's office for the Southern District of New York, attorneys for respondents.

In the amended petition filed in this proceeding on January 12, 1976, relators claimed that their legal and constitutional rights were being violated at MCC because:

> Insufficient public telephones are provided to meet the needs of the inmates, causing tension and fights among inmates over the use of the phones.
>
> (*Id*. at p.10, ¶67).

At the present time MCC has the following number of pay telephones available for use by the inmates:

Unit	Number of Pay Phones
Honor Unit (and hospital)	2
3	1
5N	2
5S	2
7N	2
7S	2
9N	2
9S	2
11N	3
11S	3

(See respondents' "response to Interrogatory #16"). Inmates can use these phones in the same manner in which the general public uses pay phones; thus, they can make local calls by paying 10¢ for the first three minutes, and long distance calls either by paying for the call in coins deposited in the phone, making a collect call, or charging the call to a telephone credit card or a home or office phone number. Inmates can use the phones at any time of the day or night except for the periods when they are locked in their rooms.

On or about September 9, 1976, I received a copy of a letter from respondents' counsel to this Court advising that the New York Telephone Company had informed respondent Warden Taylor that "it plans within the very near future on converting [the pay phones in the residential units at MCC] to 'restricted dialing' which would permit phone calls only to telephones within area codes 212, 914, 516, and 201." The letter further explained that respondents were "discussing with representatives of the New York Telephone Company possible alternatives and the time schedule for this proposed conversion" but that they "cannot presently anticipate the outcome of these discussions, but will keep the Court and counsel informed." (A copy of this letter is attached hereto as Exhibit A).

On Monday, September 13, 1976, I was orally advised by counsel for respondents that as of Wednesday, September 15, 1976, the New York Telephone Company would restrict services in the housing units at MCC as follows:

1. The number of pay phones will be reduced to one in each housing unit and two in the dorm units (11S).

2. These pay phones can be used only to make calls within the 212 area (New York City).

3. Each housing unit will also have one

phone (two in the dorm unit) from which inmates can make long-distance calls through a switchboard within MCC during a limited and as yet undetermined period each day.

4. Inmates will be permitted to make long distance calls only if the person being called accepts the charges. They will not be permitted to pay for their own long-distance calls.

5. There will be no long-distance telephone in the hospital or honor unit. Inmates in those units will have to make special arrangements to place long-distance calls.

Relators, by this application, seek to prevent these restrictions of phone services currently available to them. Respondents may prevent such curtailment of services either by negotiation or legal action against the New York Telephone Company or by providing an alternative means of insuring such phone services to relators, as through substantial expansion of the MCC switchboard system currently planned for long-distance telephoning.

Telephones play a significant role in the daily lives of ordinary citizens. For persons confined to a detention facility, the telephone becomes a crucial link with the outside world, one of the few means available to communicate with attorneys and bondsmen and to maintain ties with family and friends. As such, the availability of telephone services is equally as fundamental in significance as visiting opportunities. As this Court found, in forbidding respondents from restricting visiting at MCC:

> People in confinement possess an expanding array of basic human rights.... Central among these rights is the opportunity to communicate and visit with kin and with friends [citation omitted] ... a reciprocal

> opportunity protected in law for those on the outside as well as those inside.... The presumption is that these basic rights should be unfettered; restrictions on such valued rights must be justified by the requirements of the prison environment.
>
> United States ex rel. Wolfish v. Levi, 406 F.Supp. 1243, 1247 (S.D.N.Y. 1976). Emphasis added.

Indeed, for those relators whose friends and kin live at a distance or are physically unable to travel to the prison, the phone may be a more valued service than the opportunity to visit.

That the availability of telephone service is an issue cognizable by this Court is established by the fact that it has been found to be an issue of constitutional significance in federal district courts adjudicating conditions in state jails. See, e.g., Manicone v. Cleary, 74 Civ. 575 (D.C.N.Y., June 30, 1975); Dillard v. Pitchess, 399 F.Supp. 1225 (C.D.Cal., 1975); Marion County Jail Inmates v. Broderick, 72 Civ. 424 (S.D.Ind., March 24, 1976); Inmates of Suffolk County Jail v. Eisenstadt, 360 F.Supp. 676 (D.Mass. 1973); Brenneman v. Madigan, 343 F. Supp. 128 (N.D.Cal. 1972); Hamilton v. Love, 70 Civ. 201 memorandum opinion (ED Ark. June 22, 1971). Indeed, numerous of these cases ordered provision of a certain number of free telephone calls, a practice considerably more liberal than services presently available at MCC. (See, e.g., Manicone v. Cleary, supra; Cain v. Perk, 74 Civ. 569 (N.D.Ohio, September 25, 1974)). Moreover, it is significant that many of these cases, although litigating conditions in jails serving courts of limited geographic jurisdiction, made substantial provision for long-distance calls. At MCC, which serves as a pretrial detention facility for courts in the Southern and Eastern Districts of New York, as well as the District of New Jersey, unrestricted long-distance phone service becomes a substantially more important component of relators' access to counsel and the courts.

The inadequacy of telephone services as they currently exist at MCC is a matter of serious concern to relators, as evidenced by the inclusion of this issue in both the pro se and amended petitions. A random survey of persons incarcerated at MCC by Harvey N. Alter, criminologist, produced the following results concerning the inadequacy of existing phone services:

> Q. Have you ever had to wait longer than one-half hour to use the phone?
>
> A. Yes, 126; no, 12.
>
> Q. To the best of your knowledge, is the limited number of phones at MCC a source of tension and/or conflict among the inmates?
>
> A. Yes, 134; no, 5.

Moreover, I have been advised by present and former inmates at MCC that the inadequacy of phone services was the immediate cause of the food strike in the dormitory unit at MCC last spring. I have been further advised that the only homicide which has occurred to date at MCC resulted from an argument over the use of one of the limited number of pay phones available for inmate use.

I have been advised by an attorney with the Prisoners' Rights Unit of The Legal Aid Society that the phone services provided to persons confined in New York City detention facilities are less restrictive than those which will go into effect at MCC on Wednesday.

Respondents appear to concede in their letter of September 9, 1976, that the proposed changes will be more restrictive than the phone services currently provided. In any event, this fact cannot be seriously disputed. The number of phones on which long-distance calls can be made will be reduced by more than one-half, and the hours during which such calls may be placed will be severely curtailed. Inmates will no longer be permitted to pay for their own long-distance calls, even by coin, but will be forced to rely on the person they are calling to accept charges.

Individuals whose attorneys, family, or friends reside or work outside New York City will be able to call those individuals only during the limited hours during which their units are permitted to make long-distance calls.

As this Court stated in granting the preliminary injunction on visiting:

> In the face of an unquestioned worsening of the status quo, a preliminary injunction
>
> > "serves as an equitable policing measure to prevent the parties from harming one another during the litigation; to keep the parties, while the suit goes on, as far as possible in the respective positions they occupied when the suit began."
>
> Hamilton Watch Co. v. Benrus Watch Co., ... 206 F.2d at 742; see also Benson Hotel Corp. v. Woods, 168 F.2d 694, 696 (8th Cir. 1948); Capobianco v. First Nat. Bank of Palmerton, 372 F.Supp. 416, 421 (M.D.Pa. 1974)....
>
> ... [C]hanges for the worse in the already contested situation are not to be encouraged. They ought surely not to happen without reasonable advance notice and an opportunity for orderly consideration.
>
> United States ex rel. Wolfish v. Levi, supra, 406 F.Supp. at 1249-1250.

Similar considerations require the issuance of the requested injunction in the present proceeding.

I hereby certify that I have given oral notice to attorneys for respondents of my intention to seek a temporary restraining order and preliminary injunction.

I am proceeding by order to show cause because I was given less than forty-eight hours' notice of the specific nature of the restrictions and the date on which they would go into effect.

Since the new restrictions are scheduled to go into effect on September 15, 1976, relators will suffer irreparable harm as set forth above unless a temporary restraining order is issued pending the decision of this Court as to whether to grant a preliminary injunction. The normal notice requirements for an application for a preliminary injunction should therefore be dispensed with in this instance, and a temporary restraining order issued pending litigation of the request for a preliminary injunction.

Relators are not requesting taht this Court order the respondents to take affirmative action, but only to maintain the status quo and not permit more restrictive conditions to develop at MCC during litigation of this action.

WHEREFORE, it is respectfully requested that this Court order the respondents to show cause why the Court should not issue a preliminary injunction enjoining the respondents and their agents or employees from restricting or permitting restriction of the number of pay telephones or the scope of telephone services currently available to persons confined at MCC, and that the Court temporarily restrain the respondents from restricting or permitting restriction of the number of phones or the scope of telephone services currently available to persons confined at MCC pending the hearing and determination of the motion for a preliminary injunction.

MICHAEL YOUNG

Sworn to before me this
14th day of September 1976

Notary Public

[illegible]
Notary Public, [illegible] New York
[illegible]
[illegible] County
[illegible] Expires March 30, 19[illegible]

WGB:lm

September 9, 1976

BY HAND

Hon. Marvin E. Frankel
United States District Judge
United States Courthouse
Foley Square
New York, N.Y.

Re: United States ex rel Wolfish v. Levi
75 Civ. 6000 (MEF)

Dear Judge Frankel:

We wish to inform the Court and, by copy of this letter, counsel for the Relators that the New York Telephone Company has informed Warden Taylor that because of the number of fraudulent long-distance telephone calls originating from the pay phones at the MCC (in the amount of approximately $100,000 in the past six months) it plans within the very near future on converting those phones to "restricted dialing" which would permit phone calls only to telephones within area codes 212, 914, 516 and 201.

The Government is presently discussing with representatives of New York Telephone Company possible alternatives and the time schedule for this proposed conversion. We can not presently anticipate the outcome of these discussions, but will keep the Court and counsel informed.

Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney

By: ______________________
LOUIS G. CORSI
Assistant United States Attorney
Tel.: (212) 791-1966

LCB:

cc: Legal Aid Society
Criminal Appeals Bureau
U.S.D.Courthouse
Foley Square
New York, N.Y.

Att: Michael Young, Esq.

LCC:n

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U.S. DISTRICT COURT
FILED
SEP 17 1976
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA
ex rel. Louis Wolfish, et al.,

Relators,

v.

HONORABLE EDWARD LEVI,
et al.,

Respondents.

- - - - - - - - - - - - - - - - - - -x

ORDER

75 Civ. 6000 (MEF)

The attached Order To Show Cause and Temporary Restraining Order having been signed, and in furtherance of the effective compliance with said Temporary Restraining Order by Respondents herein, it is hereby

ORDERED, that the New York Telephone Company, and its agents, officers, and employees, are enjoined from removing any of the telephone lines, extensions or receivers presently in use at the Metropolitan Correctional Center or from restricting or altering in any way the telephone service presently being provided to and within said Metropolitan Correctional Center or of taking any other action which would interfere in any way with Respondents' compliance with said Temporary Restraining Order pending the duration of said Temporary Restraining Order and the determination of Relators' motion for a preliminary injunction herein; and it is further

ORDERED, that service of this Order upon the New York Telephone Company by 12:00 P.M. on September 15, 1976 shall be deemed good and sufficient service.

(31)

MICROFILM
SEP 17 1976

Dated: New York, New York
September 14, 1976

Marvin E. Frankel

MARVIN E. FRANKEL
United States District Judge

[illegible]

[illegible]

[illegible] ex rel [illegible],
et al.,

Relators,

- v -

EDWARD LEVI, et al.,

Respondents.

AFFIDAVIT

75 Civ. 6000 (MEF)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

LARRY TAYLOR, being duly sworn, deposes and says:

1. I am the Warden at the Metropolitan Correctional Center, and in that capacity, I am named as a respondent in this action. I submit this affidavit in opposition to relators' motion, brought on by order to show cause, to preliminarily enjoin the respondents from restricting or permitting restriction of the number of telephones or the scope of telephone services currently available to persons confined at the MCC.* As set forth more fully below and in the other papers submitted herewith, a change in the telephone system at the MCC presently available for inmate use has been proposed as a means to assure continued uninterrupted inmate access to local and long distance telephones and to correct, what the New York Telephone Company (the "Telephone Company") has advised us, is a substantial and growing problem of fraudulent long distance calls originating from the 23 pay telephones located in the residential units in the MCC.

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* A temporary restraining order to this effect was entered on Tuesday, September 14, 1976.

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2. At the time the MCC opened in August 1975, [illegible], at the MCC's request, [illegible] of [illegible] in the residential units (one in each unit plus one in the hospital area on the second floor). These telephones have both local and long distance capability and are available for inmate use from 6:30 A.M. to 11:00 P.M. (except during inmate counts) seven days per week.

3. Subsequently, in order to expand the telephone service available to inmates, the MCC requested the Telephone Company to install additional pay telephones in the residential units. Pursuant to these requests, the Telephone Company has installed 13 additional pay telephones and the present total of 23 such telephones are distributed as follows:

Unit	Number of Pay Telephones
Honor Unit	1
Hospital Unit	1
3	2
5N	2
5S	2
7N	2
7S	2
9N	2
9S	2
11N	3
11S	4

With the installation of these 23 pay telephones, the present physical capacity of the MCC to handle telephone lines is full; I am informed by the MCC Facilities Manager that there is no further space available on the "risers" or conduits which carry telephone lines throughout the MCC.

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4. In approximately October 1975, [illegible] [illegible] residential units at the MCC. Since that time, the MCC [illegible] attempted to assist the Telephone Company in identifying and locating those inmates who are suspected of making such fraudulent calls. In addition, the MCC staff has repeatedly advised the inmates of the seriousness of this problem and has requested that the inmates not abuse the telephone services presently available in the residential units.

5. In the latter part of August, the MCC was advised by the Telephone Company that the problem of fraudulent telephone calls originating from the MCC had increased to an intolerable level. At a meeting on September 9, 1976, representatives of the Telephone Company informed the MCC that because of this growing problem it planned to take out the 23 pay telephones immediately; at that time the Telephone Company agreed to a short delay and we explored with the Telephone Company possible alternate forms of telephone service for the inmates and took steps to inform the Court and counsel for the relators that a change in inmate telephone service was contemplated in the very near future.

6. Since that time, we have continued to discuss these problems with the Telephone Company, as well as with telecommunications personnel employed by the Bureau of Prisons, counsel and inmates. Based upon these discussions, we have formulated the following proposal, the substance of which has been forwarded to counsel for the relators both orally and in writing on September 17, 1976, for inmate telephone service:

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a. The present total of 23 pay telephones would be converted to "restricted calling" which would [illegible] it [illegible]. The [illegible] of these [illegible] would be the same as under the present system which is as follows:

Unit	Number of Pay Telephones
Honor Unit	1
Hospital Unit	1
3	2
5N	2
5S	2
7N	2
7S	2
9N	2
9S	2
11N	3
11S	4

These telephones would be available for inmate use from 6:30 A.M. to 11:00 P.M. (except during counts), as is the present case.

b. A total of 11 long-distance telephones, routed through a switchboard at the MCC, would be installed on a 5-trunkline system. These long-distance telephones would be distributed in the residential units as follows:

Unit	Number of Long Distance Telephones
Honor Unit	1
3	1
5N	1
5S	1
7N	1
7S	1
9N	1
9S	1
11N	1
11S	2

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Inmates in the Hospital Unit would be given access to the [illegible] [illegible] eight-hour period each day [illegible]; the tentative schedule is from noon to [illegible] P.M.. Inmates would be permitted to make collect calls through this switchboard. In a situation where a collect call will not be accepted by an inmate's attorney, and the MCC has been able to verify this, the inmate will be permitted to place a long distance call through this switchboard or the institution switchboard and to charge such a long distance call to his commissary account, provided that the inmate gives the MCC written authorization for this charge. This same procedure for charging long distance calls to a commissary account will be available for calling family in an emergency situation. Long distance calls would be limited to 5 minutes in duration, and a "sign-up" book would be instituted in an attempt to assure equitable access to the long distance lines.

c. As is presently the MCC's policy, emergency need for a telephone, including those instances where an inmate does not have the funds for a needed telephone call, will be handled on a case-by-case basis. (See Guidelines for New York MCC Inmates, p. 3, a copy of which is annexed hereto as Exhibit "A". These Guidelines are also printed in Spanish.)

d. This proposed system for long distance phone calls would be subject to constant review so that, where appropriate, we could undertake reasonable and feasible adjustment to the system. We anticipate that an operator will be able to properly and efficiently operate a 5 trunkline system; such a system, with a 5-minutes limit on calls and a 3-minutes hold time between calls, should permit approximately 300 long distance phone calls during an eight hour day. In addition, discussions would continue with the Telephone Company to

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determine whether an alternate form of [illegible] service would be feasible on a long term basis.

7. The costs for installing the long distance equipment, as well as a monthly rental charge would be incurred by the MCC. In addition, the MCC would hire additional personnel, including a full time operator as well as relief help, in order to operate the switchboard 8 hours per day, 7 days per week. The costs of these additional services are anticipated to be as follows:

Installation charge	$ 342.83
Monthly Rental	$ 113.18
Annual salary for Operator and Relief (approximate)	$14,600.00

In addition, in order to carry a total of 34 telephone lines through the MCC (23 phone lines and 11 long-distance lines), temporary arrangements and alterations will be made until more permanent physical alterations can be planned and made and additional risers installed at a cost of approximately $3,600.00.

8. Telecommunications personnel from the Bureau of Prisons and I have considered and discussed with the Telephone Company other possible alternate forms of telephone service for inmates. We have been informed by the Telephone Company that presently the direct dialing capability of a pay telephone can only be restricted to calls within the geographical area of a ten cent telephone call, in this case, within area 212; thus it is not now possible to offer pay telephone service restricted only to area 212 and surrounding area codes. The Telephone Company has also advised us that due to the type of equipment used in New York City, Telephone Company operators in New York City are not presently able to identify and verify the origin of

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a telephone [illegible] at the time the call is made; thus, with [illegible] MCC, [illegible] to place credit card or third-party charge calls originating from the pay telephones located at the MCC. The Telephone Company has, however, informed us that it presently has one operator-controlled switchboard located at 50th Street in Manhattan at which some screening-type system would be possible aside from the monthly equipment rental and mileage charge of $885.73 plus a monthly charge for operator service, and a special engineering charge*, the Telephone Company has informed us that it is planning to terminate service from this switchboard in the near future and that it therefore does not wish to offer such service. We have also considered some form of limited centrex telephone system** which is available from the Telephone Company. In order to control the direct usage costs of such a system, MCC personnel would have to closely monitor the use of that telephone system which would result in substantial additional manpower costs; moreover, such a system would require the installation of an additional form of telephone service in the form of an MCC operator-controlled switchboard (as we have presently proposed) in order to provide long-distance capability for inmates. Because of these factors, we believe that such a system would not be feasible. In addition, we have considered some form of GSA telephone service; we are informed that under a GSA system, the problem of fraudulent calls would not be corrected.

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* We are presently attempting to find out the amount of these latter two charges.

** Under a centrex system, we are informed, a subscriber rents telephone lines to specific geographical areas and then pays an additional charge based on usage.

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[illegible]

the proposed [illegible] telephone [illegible]

which will insure that inmates have reasonable access to both local and long distance telephone service and will also help to minimize the problem of fraudulent long distance telephone calls originating from the MCC. We are, however, continuing to discuss these problems in order to determine whether there are other, more long-range, solutions for this situation.

WHEREFORE, it is respectfully requested that the Court deny relators' motion for a preliminary injunction and dissolve the present temporary restraining order.

Larry Taylor

LARRY TAYLOR
Warden, MCC

Sworn to before me this
21st day of September 1976

"AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 4004)".
Notary Public

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will please take notice that a ——
ich the within is a copy, was this day
ntered in the within entitled action,
office of the Clerk of this Court.

ted, N. Y., ——————, 19 ——

Yours, etc.,

——————
United States Attorney
Attorney for ——————

——————
Attorney for ——————

ase take notice that the within ——
e presented for settlement and sig-
of the Honorable ——————
States District Judge, at the office of
erk, Room 601, United States Court-
, Foley Square, Borough of Manhat-
City of New York, on the —— day of
——, 19 ——, at 10:30 o'clock in the
—— noon or as soon thereafter as coun-
n be heard.

ted, N. Y., ——————, 19 ——

Yours, etc.,

——————
United States Attorney
Attorney for ——————

——————
Attorney for ——————

A 213

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel. WOLFISH, *et al.*,

Relators,

v.

EDWARD LEVI, *et al.*,

Respondents.

AFFIDAVIT

75 Civ. 6000 (MEF)

ROBERT B. FISKE, JR.

TEL. 791-1966

United States Attorney
Attorney for U.S.A.

Due service of a copy of the within is hereby admitted.

New York, 9/21, 19 76

——————
Attorney for

To

——————
Attorney for

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Rec'd in Ct
9/21/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA
ex rel. Louis Wolfish, et al.,

Relators,

v.

HONORABLE EDWARD LEVI, et al.,

Respondents.

- x

MOTION TO VACATE

75 Civ. 6000 MEF

The New York Telephone Company moves the Court for an Order vacating its *ex parte* Order, dated September 14, 1976, enjoining the New York Telephone Company from removing, altering or interfering with any telephone lines, extensions or receivers in use at the Metropolitan Correctional Center or from restricting or altering in any way the current telephone service at said Center, pending determination of Relators' pending motion for a preliminary injunction herein. The within motion is made on the grounds set forth with particularity in the affidavit of William Breen, attached hereto as Exhibit I.

GEORGE E. ASHLEY
Attorney for
NEW YORK TELEPHONE COMPANY
1095 Avenue of the Americas
New York, New York 10036

By

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
ex rel. Louis Wolfish, *et al.*,

Relators,

v.

HONORABLE EDWARD LEVI, *et al.*,

Respondents.

75 Civ. 6000 MEF

WILLIAM BREEN, being duly sworn, deposes and says:

1. I am employed by New York Telephone Company (hereinafter referred to as "Telephone") as Security Manager-New York City Region-East. I have been a Security Manager for approximately six years. In such capacity, I am responsible for both field investigations in New York City-East and toll fraud investigations in the Downstate New York area. I am fully familiar with the facts stated herein and make this affidavit in support of Telephone's motion to vacate this Court's Order of September 14, 1976, made and entered in this proceeding.

2. Such Order enjoined Telephone from removing any of its telephone lines, extensions, or receivers presently in use at the Metropolitan Correctional Center (hereinafter referred to as "MCC") or from restricting or altering in any

way the telephone service presently being provided to and within such Center. (A copy of the Order is hereto annexed as "Exhibit A".)

3. During the summer of 1975, my office received the first of many oral and written communications from Centralized Ticket Investigation (CTI) concerning extensive telephone toll fraud emanating from the public telephones located at MCC. (A list of the telephone numbers involved and their locations is hereto attached as "Exhibit B".)

4. CTI is a bureau of Telephone which has as its function the initial investigation of uncollectible charges relating to possibly fraudulent telephone calls (e.g., unauthorized third party or credit card calls, fictitious credit card numbers, etc.). It is CTI's practice, in the case of such uncollectible calls, to contact the recipient of the call to determine who originated the call. CTI attempts to have the originator of the call accept charges, and, if such party refuses to do so, the matter is referred to the Security Division for further investigation.

5. In September 1975, after receipt of CTI's advice, representatives of Telephone visited the offices of Larry Taylor, the Warden of MCC, to discuss the problem and its possible solution. Warden Taylor was advised that certain detainees at the Center had apparently devised a means of evading telephone charges for calls made from the twenty-three public

pay stations installed at the Center by charging such calls to non-existent credit card numbers or by the unauthorized use of actual credit card numbers or the names of third parties. Warden Taylor was advised that these losses were both substantial and growing, and that illegal calls were being made all over the United States, Canada, Europe, Asia and Latin America, and traced back, at considerable administrative expense, to the MCC. Warden Taylor's cooperation was requested to the extent of informing the detainees that the continued abuse of telephone service might necessitate possible termination of that service and the substitution of some form of alternative service.

6. I am advised that meetings were thereafter held by prison officials with the detainees advising the latter that abuse of the telephones might result in curtailment or modification of telephone service. Despite this, however, the abuse of telephone service continued. Figures from August 1975 to July 1976 show that Telephone lost over $97,650 due to unauthorized telephone calls originating from MCC during that period. This represents some 57,220 individual calls. In addition, the problem appears to have spread, and is spreading, across the country, and my office is now routinely receiving cases from associated Bell System companies in other states, involving such cities as Chicago, Baltimore, Nashville and Atlanta, to name a few, all of which are experiencing "uncollectible" telephone problems relating to calls originating

from the MCC. See, for example, copies of letters dated July 19, 1976 and September 9, 1976, respectively, on the stationery of C. & P. Telephone and Southern Bell Telephone Company, which are attached hereto as "Exhibit C".

7. I am advised that from January 1976 through July 1976, twenty-four percent (24%) of all suspected fraudulent telephone calls originating in the Manhattan, Bronx and Westchester areas (consisting of approximately four million public and private telephones) were traced to the 23 public telephones at MCC.

8. In an effort to stem this severe revenue loss, several meetings were held during August of this year by various officials of Telephone. Numerous alternatives were discussed from restriction of access to long distance operators to outright removal of the offending pay stations. A committee was appointed, including myself, to visit MCC in an attempt to solve the problem.

9. As a result of Telephone's initiative, several meetings were held with the Warden's office at which legal and telecommunications experts from the Bureau of Prisons were in attendance. The most recent of these meetings was held September 16, 1976 where the Warden stated that in his opinion the best solution available to MCC was to keep all 23 of the present pay phones in place but to restrict them to local calling, and to install at the government's expense eleven extensions and five trunks to handle long distance calls.

All long distance calls would be logged by a switchboard operator to be retained or employed by MCC.

10. Although Telephone is not a party to the within action and was never given notice, prior to entry, of the ex parte temporary restraining order against it, the United States Attorney's office has provided Telephone with a copy of Relators' papers on the pending motion for a preliminary injunction.

11. We note that in their papers, Relators favor, as an alternative to any kind of curtailment of telephone service, a "substantial expansion of the MCC switchboard system currently planned for long-distance telephoning." See page 4 of the affidavit of Michael Young, dated September 14, 1976, filed in support of the preliminary injunction motion.

12. Telephone clearly has no objection to either MCC's requests for service set forth in paragraph 9 hereof, or, indeed, to a further expansion of the switchboard system as requested by Relators if that becomes necessary at any time in the future. Telephone is in the business of supplying telephone service and will be most willing to do so in this case, and in any manner desired, as long as it is compensated for such service in accordance with applicable tariffs.

13. Telephone has an obligation to protect itself from a potentially staggering revenue loss generated by outright fraud, a loss which must ultimately affect the price of

telephone service to the average consumer. Therefore, Telephone obviously cannot allow the existing situation at MCC to continue.

14. Telephone respectfully submits that for the reasons set forth herein the Court's Order prohibiting any change in the existing telephone service at MCC should be vacated.

WHEREFORE, the New York Telephone Company respectfully requests that this Court grant its motion in its entirety.

William Breen
William Breen

Sworn to before me this
21st day of September, 1976.
Anne M. Menton

ANNE M. MENTON
Notary Public, State of New York
No. 41-4615873
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1977

AGC:n

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :
ex rel. Louis Wolfish, et al., :

Relators, : **ORDER**

: 75 Civ. 6000 (MEF)

v. :

HONORABLE EDWARD LEVI, :
et al., :

Respondents. :

- - - - - - - - - - - - - - - - - - - x

The attached Order To Show Cause and Temporary Restraining Order having been signed, and in furtherance of the effective compliance with said Temporary Restraining Order by Respondents herein, it is hereby

ORDERED, that the New York Telephone Company, and its agents, officers, and employees, are enjoined from removing any of the telephone lines, extensions or receivers presently in use at the Metropolitan Correctional Center or from restricting or altering in any way the telephone service presently being provided to and within said Metropolitan Correctional Center or of taking any other action which would interfere in any way with Respondents' compliance with said Temporary Restraining Order pending the duration of said Temporary Restraining Order and the determination of Relators' motion for a preliminary injunction herein; and it is further

ORDERED, that service of this Order upon the New York Telephone Company by 12:00 PM. on September 15, 1976 shall be deemed good and sufficient service.

Dated: New York, New York
September 14, 1976

/s/ MARVIN E. FRANKEL
United States District Judge

76 COIN MACHINES FEDERAL HOUSE OF DETENTION

LINE #	LOCATION
742- 9710	2FL
766- 8517	9FL-S
8518	11FL-S
8524	2FL MEDICAL DEPT N
9191	11FL-N
9192	11FL-S
9193	9FL-N
9194	7FL-S
9195	7FL-N
9196	5FL-N
962- 9137	11FL-N
9162	11FL-S
9481	3FL-N
9511	5FL-S
9534	5FL-N
9569	7FL-S
9643	7FL-
9676	9FL-N.
9746	9FL-S
9757	11FL-S
9771	5FL-N
9772	11FL-N
9813	11FL-N

A 224

Heil H of [illegible]

C&P Telephone
2302 Arlington Federal Building
201 N. Charles Street
Baltimore, Maryland 21201
Phone (301) 393-3578

Washington Suburban Area—Maryland
Wheaton Plaza Office Bldg. South
Wheaton, Maryland 20902
Phone (301) 468-3607

C. Herbert Rouse
Staff Supervisor—Security
Asset and Revenue Protection

July 19, 1976

Mr. W. F. Breen
Security Manager
New York Tel. Co.
88-11 165 St.
Jamaica, N.Y. 11432

Previously referred 6/15/76

Re: Md. Case No. 24M-31A-76

Dear Mr. Breen:

The attached post-billing case investigated by our C.T.I. for suspected toll fraud has calls originating in your area.

As outlined in the "Responsible Company Toll Investigation Plan" this case is being forwarded to the originating Company Security organization for deterrent action.

A feedback is not expected. However, if we can be of assistance, kindly let us know.

Sincerely,

J. J. Novotny

J. J. Novotny
Security Supervisor - Fraud

A 225

[illegible]

SEP 14 1976

James T. Duncan
Area Security Manager -
North Florida

Southern Bell
107-400 Building
Jacksonville, Florida 32202
Phone (904) 353-2823

September 9, 1976

RE: MIKE BOVA
FRAUDULENT CREDIT CARD
FILE: 16-0-309

Mr. W. F. Breen
Security Manager-Long Island
88-11 165th St.
Jamaica, New York 11432

Dear Sir:

Attached are copies of our CTI's preliminary investigation of fraudulent calls billed to North Florida numbers but originating in your area.

This information is forwarded in accordance with System Practices and requires no feedback.

Yours very truly,

Security Manager
North Florida Area

kw
Attachment

A 226

NOTICE OF ENTRY

Sir:—Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

Index No. 75 Civ. 6000 MEF Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
ex rel. Louis Wolfish, et al.,

Relators,

v.

HONORABLE EDWARD LEVI, et al.,

Respondents.

MOTION TO VACATE WITH SUPPORTING AFFIDAVIT

GEORGE E. ASHLEY
Attorney for NEW YORK TELEPHONE COMPANY
Office and Post Office Address, Telephone
1095 Avenue of the Americas
New York, N. Y. 10036

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

....

Attorney(s) for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rec'd in Ct
9/21/76

-----------------------------------x

UNITED STATES OF AMERICA
ex rel. Louis Wolfish, et al., :

Relators, :

v. :

HONORABLE EDWARD LEVI, et al., :

Respondents. :

-----------------------------------x

75 Civ. 6000 MEF

CAMILLE G. BLAIR, being duly sworn, deposes and says:

1. I am an Assistant Vice President employed by the New York Telephone Company (hereinafter referred to as "Telephone") in charge of customer services for New York City. I am fully familiar with the facts stated herein and make this affidavit in support of Telephone's motion to vacate this Court's Order of September 14, 1976, made and entered in this proceeding.

2. During August 1976, it was brought to my attention that Telephone was losing substantial revenues due to fraudulent telephone calls originating from the 23 public pay telephones located in the Metropolitan Correctional Center (hereinafter referred to as "MCC"). I am informed that from August 1975 to July 1976 this loss due to fraudulent use was over $97,650.

3. Faced with this large, continuing and indeed increasing loss to Telephone due to such calls placed from the public pay telephones located in MCC, I ordered Telephone

personnel to study various alternative methods of providing service to MCC, including, but not limited to, restricting the public pay telephones currently located at MCC.

4. It was determined that with the present state of telecommunications technology, the direct dialing capability of a pay telephone (where no contact with an operator is required) can only be restricted to calls within the geographical area of a ten cent initial period call, in this case, within area code 212, or New York City. It was also determined that it was not practical to have calls placed from the 23 public pay telephones located at MCC screened by Telephone operators since the telephone network operates in such a manner that such calls might be directed at random, to any one of 308 operator positions manned by approximately 650 operators. These operators do not currently have the capability of knowing from what telephone a call is emanating. I am informed that in order for these operators to determine when a call is emanating from the public pay telephones at MCC, technological changes would have to be made in the existing equipment and all third party and credit card calls placed from any telephone served by these 308 operator positions would have to be screened. I am further informed that the annual cost of instituting this procedure would be approximately $240,000, which cost would have to be borne by MCC.

5. The Company also explored the possibility of trunking these calls to an existing manual cord board located at West 50th Street in Manhattan. This was rejected as not being feasible because of the expense involved and because this board is scheduled to be retired from service in the near future.

6. On September 9, 1976 and again on September 16, 1976, I met with Warden Taylor of MCC and members of his staff to inform him that because of the high incidence of fraud, the current public telephone arrangement at MCC could not continue. I informed Warden Taylor of the results of our studies and offered to provide alternate forms of telephone service to MCC including, but not limited to, Centrex service which would be limited to the 516, 203, 914 and 201 area codes. After discussing various alternatives, Warden Taylor informed me that, in his opinion, the best solution available to MCC was to keep all 23 of the present pay telephones in place, but to restrict them to New York City (212 area code). He further requested that the Company install, at the government's expense, 11 extensions, 5 trunks and a small switchboard to be manned by MCC personnel to handle long distance calls. I informed Warden Taylor that Telephone could so restrict the 23 pay telephones and could install the 11 extensions, 5 trunks, and any additional extensions and trunks which might be required, and the switchboard to handle long

distance calls on the conditions that MCC provide the necessary additional wiring within the facility. Warden Taylor agreed to provide such wiring.

Camille G. Blair

Sworn to before me this
21 day of September, 1976

JOAN E. DONOHUE
Notary Public, State of New York
No. 31-4[illegible]5555
Qualified in New York County
Commission Expires March 30, 1978

NOTICE OF ENTRY

Sir:-Please take notice that the within is a *(certified)* true copy of a

duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

the day of 19

at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

Index No. 75 Civ. 6000 MEF Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
ex rel. Louis Wolfish, *et al.*,

Relators,

v.

HONORABLE EDWARD LEVI, *et al.*,

Respondents.

AFFIDAVIT

GEORGE E. ASHLEY
Attorney for NEWYORK TELEPHONE COMPANY
Office and Post Office Address, Telephone
1095 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10036

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated, 9/21/76. 4:30 p

Attorney(s) for

LGC:n

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x
UNITED STATES ex rel. WOLFISH, et al., :

Relators, :

AFFIDAVIT

v. :

75 Civ. 6000 (MEF)

EDWARD LEVI, et al., :

Respondents. :

- -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

MICHAEL M. WATNICK, being duly sworn, deposes and says:

1. I am employed by the City of New York, Department of Corrections as Director of Fiscal Control for the Department of Corrections. I am familiar with the matters set forth herein on personal knowledge or based upon inspection of official records or other documents of the Department of Corrections.

2. The Department of Corrections operates and is responsible for the following correctional or detention facilities:

a) Bronx House of Detention which housed, as of September 22, 1976, approximately 477 men;

b) Queens House of Detention which housed, as of September 22, 1976, approximately 490 men;

c) Brooklyn House of Detention which housed, as of September 22, 1976, approximately 747 men;

d) N.Y.C. House of Detention for Men which housed, as of September 22, 1976, approximately 1,427 men;

e) Adolescent Reception Detention Center which housed, as of September 22, 1976, approximately 1,083 persons;

f) N.Y.C. Correctional Institution for Men which housed, as of September 22, 1976, approximately 1,669 men;

g) N.Y.C. House of Detention for Women which housed, as of September 22, 1976, approximately 325 women.*

As of September 22, 1976, there were approximately 6,760 individuals incarcerated at the facilities operated by the N.Y.C. Department of Corrections; of this total, approximately 4,462 were pre-sentence detention cases, and 2,298 were post-sentenced cases.

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* In addition, the Department of Corrections also operates and is responsible for a number of hospital facilities and court-detention facilities in New York City.

3. The Department of Corrections subscribes to telephone service from the New York Telephone Company for these institutions; this telephone service includes telephones for use by the institution and telephones for use by the inmates. For the eleven month period from July 1, 1975 to May 31, 1976, the Department of Corrections incurred the following charges for telephone service at all of its detention, correctional and hospital facilities:

Fixed Charges: (Equipment)	$ 244,693.24
Additional Message Units:	$ 245,798.15
Toll Charges (long distance):	$ 106,666.20
Moving Charges (changing locations of equipment):	$ 2,161.91
	$ 599,319.50

Of that total approximately 70% are charges for the inmate telephone system; these charges include (a) fixed charges (equipment), (b) additional message units, (c) tolls, and (d) moving charges. The Department of Corrections incurs all of these charges and is not reimbursed by the inmates except for calls made by sentenced inmates.

/s/
MICHAEL M. WATNICK
Director, Fiscal Control
Department of Corrections

Sworn to before me this

27 day of September 1976

/s/
NOTARY PUBLIC
William F Porter

ːill please take notice that a ____
h the within is a copy, was this day
tered in the within entitled action,
office of the Clerk of this Court.

d, N. Y., ________________, 19 ____

Yours, etc.,

____
United States Attorney
Attorney for ________

____
Attorney for ________
____

e take notice that the within ____
presented for settlement and sig-
of the Honorable ____________
States District Judge, at the office of
rk, Room 601, United States Court-
Foley Square, Borough of Manhat-
y of New York, on the ____ day of
, 19 ____, at 10:30 o'clock in the
noon or as soon thereafter as coun-
be heard.

, N. Y., ________________, 19 ____

Yours, etc.,

____
United States Attorney
Attorney for ________

____
Attorney for ________

Form No. USA-33s-270
(Rev. 10-25-65)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel. WOLFISH,
et al.,

Relators,

v.

EDWARD LEVI, et al.,

Respondents.

AFFIDAVIT

75 Civ. 6000 (MFT)

ROBERT B. FISKE, JR.
United States Attorney
Attorney for U.S.A.

TEL. ~~264-6311~~
791-1966

Due service of a copy of the within is hereby admitted.

New York, 9/27, 1976

____
Attorney for

To

____
Attorney for

12
bj
601

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---------------------------------------x

UNITED STATES ex rel. LOUIS WOLFISH, :
et al.,
:
Relators,

-v- : **AFFIDAVIT**

EDWARD LEVI, et al., : 75 Civ. 6000 (MEF)

Respondents. :
---------------------------------------x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT VERDEYEN, being duly sworn, deposes and says:

1. I am an Associate Warden at the Metropolitan Correctional Center, New York, New York, and as such I am familiar with the matters set forth herein.

2. I submit this affidavit in opposition to relators' motion for a preliminary injunction relating to proposed changes in the telephone service available to inmates at the Metropolitan Correctional Center.

3. I have been informed by the Assistant U. S. Attorney Louis G. Corsi that relators seek, inter alia, in said motion, to require the Metropolitan Correctional Center to permit inmates to charge long-distance calls to their commissary accounts. In order to implement such a proposal, the following steps would have to be taken each time an inmate wished to charge a long-distance call to his commissary account:

a. The inmate would first have to fill out an authorization form for such a charge specifying the number he wished to call and the desired length of the call.

b. An employee would then have to call a telephone company operator to ascertain the amount of the charge for the requested call.

c. Next, the authorization form would be forwarded to the commissary and an employee there would have to determine whether the inmate had a sufficient balance in his commissary account to cover the requested call. This determination would have to be made at a time relatively close to the time of the requested call to prevent the inmate from subsequently charging other items to his account thereby reducing the balance below the charge for the requested call.

d. After approval by the commissary employee, the authorization form would be sent to the switchboard operator handling the long-distance calls to be charged to commissary accounts. When the inmate requests his long-distance call to be placed, said operator would have to check to see if an approved authorization had been forwarded.

e. After placing the call, the switchboard operator would have to monitor it to ensure that the inmate did not go over the length of time specified on the authorization form.

f. At the end of each day, all of the approved authorizations with specific charges would be returned to the commissary for subsequent posting to individual accounts.

4. The above-described procedure would impose an excessive administrative burden upon the Metropolitan Correctional Center. In this connection, it should be noted that during the period of approximately 1965-1972, Bureau of Prisons' policy on commissary procedures permitted the establishment of a form of subaccounting for the purpose of prepaying extraordinary mail handling for inmates. This

entailed the withdrawing of specified amounts from personal accounts and recorded on a subsidiary record maintained in the mailroom. As requests for special handling arrived in the mailroom, individual subaccounts were reduced accordingly. To my knowledge, this practice has been discontinued from all Bureau of Prisons' facilities because the system became too time-consuming and created financial audit deficiencies.

5. Furthermore, in view of the length of time and attention needed for the switchboard operator to place and monitor each such call, this system would result in a most inefficient use of the telephone lines available to inmates.

6. For these reasons, the administration of the Metropolitan Correctional Center remains opposed to the routine use of the inmates' commissary accounts for the payment of long-distance calls. Rather, we believe that both the inmates and the Metropolitan Correctional Center would be better served by a system which permits such calls to be charged to commissary accounts only in cases where the party whom the inmates wished to call will not accept a collect call or in cases of family emergencies.

WHEREFORE, it is respectfully requested that relators' motion for a preliminary injunction be denied.

ROBERT VERDEYEN
Associate Warden
Metropolitan Correctional Center

Sworn to before me this
27th day of September, 1976

"AUTHORIZED BY THE ACT OF JULY 7, 1955
[illegible] 2304)".
Notary Public

You will please take notice that a ____ of which the within is a copy, was this day duly entered in the within entitled action, in the office of the Clerk of this Court.

Dated, N. Y., ____________, 19 ____

Yours, etc.,

____
United States Attorney
Attorney for ____________

To

____
Attorney for ____________

Sir:

Please take notice that the within ____ will be presented for settlement and signature of the Honorable ____________ United States District Judge, at the office of the Clerk, Room 601, United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the ____ day of ________, 19 ____, at 10:30 o'clock in the ________ noon or as soon thereafter as counsel can be heard.

Dated, N. Y., ____________, 19 ____

Yours, etc.,

____
United States Attorney
Attorney for ____________

To

____
Attorney for ____________

A 239

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES ex. rel. LOUIS WOLFISH, et al.,

Relators,

-v-

EDWARD LEVI, et al.,

Respondents.

AFFIDAVIT
75 Civ. 6000 (MEF)

ROBERT B. FISKE, JR.
TEL. 264-8311
791-1966
United States Attorney
Attorney for USA

Due service of a copy of the within is hereby admitted.

New York, 9/27, 19 76

____
Attorney for

To

____
Attorney for

State of New York)
:
County of Bronx)

LOUIS C. GRECO, being duly sworn, deposes and says:

1. I am the Warden at the New York City House of Detention for Men (HDM) Rikers Island, which is part of the New York City Department of Correction; as such I am familiar with the matters set forth herein either on personal knowledge or upon inspection of official records of HDM.

2. As of September 24, 1976, 1421 men are incarcerated at HDM which is used primarily for detention.

3. There are 5 direct telephone lines (Auxiliary telephones) that service 5 major cell blocks (Cell Blocks 4,5,6,7 and 8), each cell block (240 cells) has one line.

4. Two other telephone lines (Auxiliary telephones) service 2 major cell blocks plus 1 smaller cellblock. For example, block #2 (240 cells) is combined with block #1A (150 cells); block #3 (240 cells) is combined with block #1B (50 cells).

5. One additional telephone line services 2 smaller satellite housing units (124 cells @ 62 cells each).

6. These telephones are for inmate use for making local calls (area code 212) and long distance calls to area codes 516,914,201 and 203.

7. Inmates at HDM are permitted use of these telephones during lock-out periods each day; lock-out periods occur at the following times: (approximately)

9:00 A.M. to 11:00 A.M.
1:00 P.M. to 3:00 P.M.
5:00 P.M. to 9:00 P.M.

8. All calls are limited to 3 minutes in duration and controlled by Correctional Staff. Generally, one half of each cellblock has access to the telephones on alternating days.

Louis C. Greco
Warden, HDM

Sworn to before me
this 27 day of September 1976

John B. Laterza
NOTARY PUBLIC

JOHN B. LATERZA

Affidavit

State of New York)
) ss.:
County of Kings)

THEODORE R. WEST, being duly sworn, deposes and says:

1. I am the Warden at the Brooklyn House of Detention ("BHD") which is part of the New York City Department of Correction; as such I am familiar with the matters set forth herein either on personal knowledge or upon inspection of official records of BHD.

2. As of September 24, 1976, 760 men are incarcerated at BHD which is used primarily for detention.

3. There are 28 telephones for use of inmates for local calls (area code 212) and long distance calls to area codes 516, 914, and 201; these telephones are distributed on the basis of four telephones per standard housing floor, or approximately 1 phone for every 30 inmates. Upon prior request, an inmate is permitted to make a collect, long-distance call on a telephone other than those located on the housing floor.

4. Inmates are permitted to use these housing floor telephones only during lock-out periods each day; these lock-out periods occur at the following times (approximately):

8:30 A.M. to 11:00 A.M.
1:00 p.m. to 3:00 P.M.
6:00 P.M. to 10:00 P.M.

5. Each inmate telephone call is limited to 3 minutes in duration.

Warden, BHD

Sworn to before me
this [illegible] day of September 1976

NOTARY PUBLIC

LC:isk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--x

UNITED STATES ex rel. WOLFISH, *et al.*,

Relators,

v.

EDWARD LEVI, *et al.*,

Respondents.

--x

AFFIDAVIT

75 Civ. 6000
(MEF)

STATE OF NEW YORK)
COUNTY OF NEW YORK :ss.:
SOUTHERN DISTRICT OF NEW YORK)

MARSHALL HAINES, being duly sworn, deposes and says:

1. I am employed by the United States Bureau of Prisons as a Research Analyst at the Metropolitan Correctional Center; as such, I am familiar with the matters set forth herein.

2. At the request of the United States Attorney's Office, on September 23, 1976, under my direction and supervision, available information from official records of the MCC was compiled by myself and my assistant, Howard Shulman, concerning (a) the home residence of M.Haines individuals incarcerated at the MCC on September ~~21~~ 23, 1976, and (b) the reason for incarceration of each of those individuals. A summary of the data, along with data relating to associated telephone area codes derived from the telephone book and from telephone operators, is contained in Exhibit A which is annexed hereto.

LC:isk

3. In addition, annexed hereto as Exhibit B is a copy of the MCC population summary sheets for the period from September 1, 1976 to September 20, 1976 which sets forth the daily inmate count for each day during that period.

Marshall Haimes

MARSHALL HAIMES
RESEARCH ANALYST, MCC

Sworn to before me this
27th day of September
1976

"AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 4004)".

Rita

LEGAL STATUS OF INMATES
VS
TELEPHONE AREA CODES

SUMMARY SHEET

Total Samples - 533 Date of Sample - 9/23/76

N.Y. - 5 Boroughs - N=269=50.5%

N.Y. - Other - N=53=9.9%

N.J. - N=63-11.8%

Pa. - N=27=5.1%

Conn. - N=5=0.9%

All Others - N=56=10.5%

Address Unknown - N=60=11.3%

/22/76 Results from PE Form 31 9/23/76	LEGAL STATUS OF INMATES VS. 212 AREA CODE (5 Boroughs of N.Y.) 5 Boroughs	 Other See Attachments	 Unknown	 TOTALS
Cadre (Designated) (Post-Conviction)	29	A 23	11	63
Civil Contempt	6	B 1		7
Sentenced	17	C 25	3	45
Unsentenced (Pre-sentence & Safe Keepers)	129	D 76	16	221
Enroute (HO) (Post-Conviction)	2	E 4	13	19
Writs (Post-Conviction)	56	F 49	14	119
P.V. (Parole & Probation) (Post-Conviction)	14	G 10	2	26
Study or Study Return	6	H 5	1	12
Week-enders (Post-Conviction)	6	I 6		12
Immigration	3	J 2		5
Escapees (Post-Conviction)	1	K 3		4
TOTALS	269	204	60	533

OTHER A

CADRE & Designated

New York	New Jersey	Pa.	Conn.	England
516= 9	201= 4	215= 2	1	1
914= 3	609= 1	Md.=1		
		Fla.= 1		
12	5	4	1	1

OTHER B

CIVIL CONTEMPT

New.York

914= 1

OTHER C

SENTENCED

New York	New Jersey	Pa.	Ind.= 1
914= 1	609= 2	215= 15	Bolivia= 1
516= 1	2 01=4		
2	6	15	2

OTHER D

PRESENTENCE & S.K's

New York

914= 8

516= 10

18

New Jersey

609= 3

201= 28

31

Conn.= 2

Fla. = 4

P.R. = 2

Md. = 1

Ind. = 2

Ky. = 1

Calif.= 3

Argentina = 3

19

Mass.= 2

Ohio = 1

Corsica= 1

Venezuela= 1

Colombia = 1

Mich. = 2

8

OTHER E.

ENROUTES

Pa.	Ohio= 1
215= 2	Mass.= 1 (617)
2	2

OTHER F

WRIT

New York	**New Jersey**	**Pa.**	**Ind.**= 1
914= 4	609= 2	717= 1	**Conn.** = 1
516= 7	201= 7	215= 5	**Calif.** = 1
518= 2		**Fla.** = 5	**Va.** = 1
		Ohio = 1	**Md.** = 1
		D.C. = 3	**Israel** = 1
		China = 2	**Peru** = 1
		P.R. = 1	
		Colombia= 1	
		Ind. = 1	
13	9	20	7

OTHER C

PAROLE & PROBATION VIOLATORS

New York
516 = 1

New Jersey
201 = 7

Kansas = 1
Colorado = 1

OTHER H

STUDY & STUDY RETURNS

New York

516 = 1

New Jersey

609 = 1

201 = 1

Conn. = 1

N.H. = 1

OTHER I

WEEKENDERS

New York	New Jersey
518 = 1	201 = 1
516 = 3	
914 = 1	

OTHER J

IMMIGRATION

Jamaica West Indies = 1

Mexico = 1

OTHER K

ESCAPEES

New Jersey **Texas** = 1

609 = 1

201 = 1

A 257

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:-------------

INSTITUTION: 158-NEW YORK (M) DATE: 09-20-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	81	134	251	466
RECEIVED	2	15	10	27
REMOVED	3-	0-	21-	24-
COUNT	80	149	240	469

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			9121
NEW CNT			469

CUMULATIVE TOTAL MAN DAYS 9590

```
CN030        U.S. DEPARTMENT OF JUSTICE                BP-1,2,3 POP. DATA
                BUREAU OF PRISONS                       VERIFIED BY:-------------
           INSTITUTION:  183-NEW YORK (F)               DATE: 09-20-76

DAILY       SERVING     SENTENCED    UNSENTENCED
COUNT       SENTENCE    HOLDOVERS     INMATES        TOTAL

FORWARD        9            3            31            43
RECEIVED       0            0             0             0
REMOVED        0-           0-            0-            0
COUNT          9            3            31            43
030

DAILY        WRIT         WORK         MAN
COUNT      FURLOUGH      RELEASE       DAYS

FORWARD                                866
NEW CNT                                 43

CUMULATIVE TOTAL MAN DAYS      909
```

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:------------

INSTITUTION: 183-NEW YORK (F) DATE: 09-19-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	10	3	32	45
RECEIVED	0	0	0	0
REMOVED	1-	0-	1-	2-
COUNT	9	3	31	43

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			823
NEW CNT			43

CUMULATIVE TOTAL MAN DAYS 866
031

A 259

A 260

CNO30 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:--------------

INSTITUTION: 158-NEW YORK (M) DATE: 09-19-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	86	134	249	469
RECEIVED	1	0	2	3
REMOVED	6-	0-	0-	6-
COUNT	81	134	251	466

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			8655
NEW CNT			466

CUMULATIVE TOTAL MAN DAYS 9121

A 261

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:

INSTITUTION: 183-NEW YORK (F) DATE: 09-18-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	10	3	33	46
RECEIVED	0	0	0	0
REMOVED	0-	0-	1-	1-
COUNT	10	3	32	45

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			778
NEW CNT			45

[illegible] TOTAL MAN DAYS 823

A 262

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:------------

INSTITUTION: 158-NEW YORK (M) DATE: 09-18-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	85	134	252	471
RECEIVED	3	0	4	7
REMOVED	2-	0-	7-	9-
COUNT	86	134	249	469

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			8186
NEW CNT			469

CUMULATIVE TOTAL MAN DAYS 8655

A 263

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:

INSTITUTION: 183-NEW YORK (F) DATE: 09-17-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	9	3	32	44
RECEIVED	1	0	2	3
REMOVED	0-	0-	1	1
COUNT	10	3	33	46

030

Brought Forward	732
New Count	46
Cumulative Total Man Days	776

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:

INSTITUTION: 158-NEW YORK (M) DATE: 09-17-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	86	152	247	485
RECEIVED	7	9	17	33
REMOVED	8-	27-	12-	47-
COUNT	85	134	252	471

.030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			7715
NEW CNT			471

CUMULATIVE TOTAL MAN DAYS 8186

A 264

A 265

```
CN030        U.S. DEPARTMENT OF JUSTICE                       BP-1,2,3 POP. DATA

                    BUREAU OF PRISONS                         VERIFIED BY:-------------

              INSTITUTION:  183-NEW YORK (F)              DATE: 09-16-76


    DAILY         SERVING      SENTENCED    UNSENTENCED
    COUNT         SENTENCE     HOLDOVERS     INMATES         TOTAL
    ---------------------------------------------------------------

    FORWARD           9            3            33             45

    RECEIVED          0            0             3              3

    REMOVED           0-           0-            4-             4-

    COUNT             9            3            32             44

    030


    DAILY         WRIT          WORK         MAN
    COUNT         FURLOUGH      RELEASE      DAYS
    ----------------------------------------------------

    FORWARD                                  688

    NEW CNT                                   44

    CUMULATIVE TOTAL MAN DAYS        732
```

A 266

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:-------------

INSTITUTION: 158-NEW YORK (M) DATE: 09-16-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	95	138	239	462
RECEIVED	1	26	13	40
RELEASED	0-	12-	5-	17-
COUNT	96	152	247	485
[illegible]				

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			7230
NEW CNT			485

CUMULATIVE TOTAL MAN DAYS 7715

A 267

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:

INSTITUTION: 183 NEW YORK (F) DATE: 09-15-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	11	2	34	47
RECEIVED	0	1	2	3
REMOVED	2-	0-	3-	5-
COUNT	9	3	33	45

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			643
NEW CNT			45

CUMULATIVE TOTAL MAN DAYS 688

A 268

```
CN030          U.S. DEPARTMENT OF JUSTICE
                                                              BP-1.2.3 POP. DATA
                    BUREAU OF PRISONS
                                                              VERIFIED BY:--------------
               INSTITUTION:  158 NEW YORK (M)  ---------- DATE: 09-15-76

   DAILY          SERVING       SENTENCED     UNSENTENCED
   COUNT          SENTENCE      HOLDOVERS      INMATES         TOTAL
   ------------------------------------------------------------------------
   FORWARD           89            147            238            474
   RECEIVED           0             11              9             20
   REMUVED            4-            20-             8-            32-
   COUNT             85            138            239            462
   030

   DAILY      WRIT          WORK           MAN
   COUNT      FURLOUGH      RELEASE        DAYS
   ---------------------------------------------------
   FORWARD
                                           6768
   NEW CNT

   CUMULATIUE TOTAL MAN DAYS         7230
```

A 269

CN030 U.S. DEPARTMENT OF JUSTICE BP-1.2.3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:------------

INSTITUTION: 183-NEW YORK (F) DATE: 09-14-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	11	2	32	45
RECEIVED	1	0	2	3
REMOVED	1-	0-	0-	1-
COUNT	11	2	34	47

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			596
NEW CNT			47

CUMULATIVE TOTAL MAN DAYS 643

A 270

```
                                                                       EP-1,2,3 POP. DATA
   CN030          U.S. DEPARTMENT OF JUSTICE
                                                                       VERIFIED BY:
                           BUREAU OF PRISONS
                                                              DATE: 09-14-76
                INSTITUTION:  158 NEW YORK (M)


   DAILY          SERVING       SENTENCED      UNSENTENCED        TOTAL
   COUNT          SENTENCE      HOLDOVERS       INMATES
   -----------------------------------------------------------------

   FORWARD           88            129             234             451
   RECEIVED           3             23              11              37
   REMOVED            2-             5-              7-             14-
   COUNT             89            147             238             474
   030

   DAILY          WRIT          WORK            MAN
   COUNT          FURLOUGH      RELEASE         DAYS
   ------------------------------------------------------

   FORWARD                                      6294
   NEW CNT                                       474
```

A 271

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:-------------

INSTITUTION: 163-NEW YORK (F) DATE: 09-13-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	8	8	32	48
RECEIVED	3	0	0	3
REMOVED	0-	6-	0-	6-
COUNT	11	2	32	45

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			551
NEW CNT			45

CUMULATIVE TOTAL MAN DAYS 596

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CN030          U.S. DEPARTMENT OF JUSTICE                      BP-1,2,3 POP. DATA

                   BUREAU OF PRISONS                           VERIFIED BY:-------------

      INSTITUTION:  158-NEW YORK (M)                      DATE: 09-13-76


   DAILY          SERVING       SENTENCED     UNSENTENCED
   COUNT          SENTENCE      HOLDOVERS      INMATES          TOTAL
   ------------------------------------------------------------------

   FORWARD          91            149            229             469

   RECEIVED          0              3              7              10

   REMOVED           3-            23-             2-             28-

   COUNT            88            129            234             451

   030


   DAILY           WRIT          WORK           MAN
   COUNT         FURLOUGH       RELEASE         DAYS
   ---------------------------------------------------

   FORWARD                                     5843

   NEW CNT                                      451

   CUMULATIVE TOTAL MAN DAYS       6294
```

A 273

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:-------------

INSTITUTION: 183-NEW YORK (F) DATE: 09-12-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	9	8	31	48
RECEIVED	0	0	1	1
REMOVED	1-	0-	0-	1-
COUNT	8	8	32	48

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			503
NEW CNT			48

CUMULATIVE TOTAL MAN DAYS 551

```
CN030          U.S. DEPARTMENT OF JUSTICE                        BP-1,2,3 POP. DATA
                    BUREAU OF PRISONS                            VERIFIED BY:--------------
             INSTITUTION:  158-NEW YORK (M)                DATE: 09-12-76

DAILY          SERVING        SENTENCED      UNSENTENCED
COUNT          SENTENCE       HOLDOVERS       INMATES           TOTAL
-------------------------------------------------------------------------
FORWARD           99             149            226              474
RECEIVED           0               0              3                3
REMOVED            8-              0-             0-               8-
COUNT             91             149            229              469
030

DAILY          WRIT           WORK            MAN
COUNT          FURLOUGH       RELEASE         DAYS
-----------------------------------------------------------
FORWARD                                       5374
NEW CNT                                        469

CUMULATIVE TOTAL MAN DAYS          5843
```

A 275

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:-------------

INSTITUTION: 158-NEW YORK (M) DATE: 09-11-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	94	149	229	472
RECEIVED	5	0	0	5
REMOVED	0-	0-	3-	3-
COUNT	99	149	226	474

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			4900
NEW CNT			474

CUMULATIVE TOTAL MAN DAYS 5374

A 276

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:-------------

INSTITUTION: 183-NEW YORK (F) DATE: 09-11-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	9	8	31	48
RECEIVED	0	0	0	0
REMOVED	0-	0-	0-	0-
COUNT	9	8	31	48

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			455
NEW CNT			48

CUMULATIVE TOTAL MAN DAYS 503

A 277

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                                                                    BP-1,2,3 POP. DATA
CN030        U.S. DEPARTMENT OF JUSTICE
                                                                    VERIFIED BY:-------------
                  BUREAU OF PRISONS
                                                             DATE: 09-10-76
      INSTITUTION:  183-NEW YORK (F)


DAILY          SERVING       SENTENCED     UNSENTENCED       TOTAL
COUNT          SENTENCE      HOLDOVERS      INMATES
-------------------------------------------------------------------------

FORWARD           8              8             30              46

RECEIVED          1              0              1               2

REMOVED           0-             0-             0-              0-

COUNT             9              8             31              48

030


DAILY          WRIT          WORK           MAN
COUNT          FURLOUGH      RELEASE        DAYS
-------------------------------------------------------

FORWARD                                      407

NEW CNT                                       48

CUMULATIVE TOTAL MAN DAYS          455
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CN030            U.S. DEPARTMENT OF JUSTICE                        BP-1,2,3 POP. DATA

                       BUREAU OF PRISONS                           VERIFIED BY:--------------

             INSTITUTION:  158-NEW YORK  (M)              DATE: 09-10-76


DAILY         SERVING        SENTENCED     UNSENTENCED
COUNT         SENTENCE       HOLDOVERS       INMATES        TOTAL
--------------------------------------------------------------------------

FORWARD          89             169           235            493

RECEIVED          8               8             6             22

REMOVED           3-             28-           12-            43-

COUNT            94             149           229            472

030


DAILY          WRIT           WORK           MAN
COUNT        FURLOUGH        RELEASE         DAYS
-----------------------------------------------------------------

FORWARD                                       4428

NEW CNT                                       472

CUMULATIVE TOTAL MAN DAYS       4900
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A 279

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CN030           U.S. DEPARTMENT OF JUSTICE                    BP-1,2,3 POP. DATA

                    BUREAU OF PRISONS                         VERIFIED BY:-------------

           INSTITUTION:  183-NEW YORK (F)                DATE: 09-09-76


DAILY          SERVING        SENTENCED     UNSENTENCED
COUNT          SENTENCE       HOLDOVERS       INMATES          TOTAL
------------------------------------------------------------------------

FORWARD           8               7              29              44

RECEIVED                          1               1               2

REMOVED

COUNT             8               8              30              46

030


DAILY          WRIT            WORK              MAN
COUNT          FURLOUGH        RELEASE           DAYS
------------------------------------------------------------

FORWARD                                          361

NEW CNT                                           46

CUMULATIVE TOTAL MAN DAYS         407
```

A 280

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:-------------

INSTITUTION: 158-NEW YORK (M) DATE: 09-09-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	89	172	240	501
RECEIVED		18	4	22
REMOVED		21-	9-	30-
COUNT	89	169	235	493
030				

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			3935
NEW CNT			493

CUMULATIVE TOTAL MAN DAYS 4428

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:------------

INSTITUTION: 183-NEW YORK (F) DATE: 09-08-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	8	7	31	46
RECEIVED				
REMOVED			2-	2-
COUNT	8	7	29	44
030				

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			317
NEW CNT			44

CUMULATIVE TOTAL MAN DAYS 361

A 281

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                                                             BP-1,2,3 POP. DATA
   CN030        U.S. DEPARTMENT OF JUSTICE
                                                             VERIFIED BY:------------
                      BUREAU OF PRISONS
                                                        DATE: 09-08-76
          INSTITUTION:  158-NEW YORK (M)



   DAILY         SERVING       SENTENCED       UNSENTENCED        TOTAL
   COUNT         SENTENCE      HOLDOVERS       INMATES
   ----------------------------------------------------------------------

   FORWARD         89            143             240               472
   RECEIVED         3             31              13                47
   REMOVED          3-             2-             13-               18-
   COUNT           89            172             240               501
   030


   DAILY         WRIT          WORK            MAN
   COUNT         FURLOUGH      RELEASE         DAYS
   ---------------------------------------------------------

   FORWARD                                     3434
   NEW CNT                                      501

   CUMULATIVE TOTAL MAN DAYS         3935
```

A 283

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:-------------

INSTITUTION: 183-NEW YORK (F) DATE: 09-07-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	8	7	31	46
RECEIVED			1	1
REMOVED			1-	1-
COUNT	8	7	31	46
030				

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			271
NEW CNT			46

CUMULATIVE TOTAL MAN DAYS 317

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:-------------

INSTITUTION: 158-NEW YORK (M) DATE: 09-07-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	91	161	242	494
RECEIVED		6	4	10
REMOVED	3-	22-	7-	32-
COUNT	88	145	239	472
030				

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			2962
NEW CNT			472

CUMULATIVE TOTAL MAN DAYS 3434

A 285

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:-------------

INSTITUTION: 183-NEW YORK (F) DATE: 09-06-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	8	7	31	46
RECEIVED	0	0	0	0
REMOVED	0-	0-	0-	0-
COUNT	8	7	31	46

030

Forward - 225
New Cnt 46
Total Mandays 271

A 286

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CN030          U.S. DEPARTMENT OF JUSTICE                        BP-1.2.3 POP. DATA
                    BUREAU OF PRISONS                            VERIFIED BY:------------
          INSTITUTION:  158-NEW YORK (M)                DATE: 09-06-76

DAILY          SERVING         SENTENCED     UNSENTENCED
COUNT          SENTENCE        HOLDOVERS       INMATES           TOTAL
-------------------------------------------------------------------------

FORWARD           91              160            242              493

RECEIVED           1                1              0                2

REMOVED            1-               0-             0-               1-

COUNT             91              161            242              494

030


DAILY          WRIT           WORK           MAN
COUNT          FURLOUGH       RELEASE        DAYS
---------------------------------------------------------

FORWARD                                       2468

NEW CNT                                       494

CUMULATIVE TOTAL MAN DAYS        2962
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A 287

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:------------

INSTITUTION: 183-NEW YORK (F) DATE: 09-05-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	9	7	31	47
RECEIVED	0	0	0	0
REMOVED	1-	0-	0-	1-
COUNT	8	7	31	46
030				

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			179
NEW CNT			46

CUMULATIVE TOTAL MAN DAYS 225

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:

INSTITUTION: 158-NEW YORK (M) DATE: 09-05-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	99	160	242	501
RECEIVED	0	1	0	1
REMOVED	7-	1-	1-	9-
COUNT	92	160	241	493

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			1975
NEW CNT			493

CUMULATIVE TOTAL MAN DAYS 2468

A 289

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

VERIFIED BY:

BUREAU OF PRISONS

INSTITUTION: 183-NEW YORK (F) DATE: 09-04-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	9	7	31	47
RECEIVED	0	0	0	0
REMOVED	0-	0-	0-	0-
COUNT	9	7	31	47
030				

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			132
NEW CNT			47

CUMULATIVE TOTAL MAN DAYS 179

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:--------------

INSTITUTION: 158-NEW YORK (M) DATE: 09-04-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	94	157	242	493
RECEIVED	5	3	1	9
REMOVED	0-	0-	1-	1-
COUNT	99	160	242	501

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			1474
NEW CNT			501

CUMULATIVE TOTAL MAN DAYS 1975

A 291

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                                                                    BP-1,2,3 POP. DATA
 CN030          U.S. DEPARTMENT OF JUSTICE
                                                                    VERIFIED BY:-------------
                       BUREAU OF PRISONS
                                                          DATE: 09-03-76
                INSTITUTION:  158-NEW YORK  (M)


 DAILY          SERVING        SENTENCED        UNSENTENCED         TOTAL
 COUNT          SENTENCE       HOLDOVERS        INMATES
 ------------------------------------------------------------------------
 FORWARD           92             157              248               497
 RECEIVED           5               2                8                15
 REMOVED            3-              2-              14-               19-
 COUNT             94             157              242               493
 030


 DAILY          WRIT           WORK             MAN
 COUNT          FURLOUGH       RELEASE          DAYS
 --------------------------------------------------------------
 FORWARD                                         981
 NEW CNT                                         493

 CUMULATIVE TOTAL MAN DAYS          1474
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A 292

CN030 U.S. DEPARTMENT OF JUSTICE BP-1,2,3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:----------

INSTITUTION: 183-NEW YORK (F) DATE: 09-03-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	8	8	27	43
RECEIVED	1	0	5	6
REMOVED	0-	1-	1-	2-
COUNT	9	7	31	47

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			85
NEW CNT			47

CUMULATIVE TOTAL MAN DAYS 132

A 293

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CN030           U.S. DEPARTMENT OF JUSTICE                          BP-1,2,3 POP. DATA

                      BUREAU OF PRISONS                             VERIFIED BY:-----------

                INSTITUTION:  158-NEW YORK (M)              DATE: 09-02-76


    DAILY        SERVING        SENTENCED     UNSENTENCED
    COUNT        SENTENCE       HOLDOVERS      INMATES         TOTAL
    ----------------------------------------------------------------

    FORWARD          94            150            240           484

    RECEIVED          0              8             16            24

    REMOVED           2-             1-             8-           11-

    COUNT            92            157            248           497

    030


    DAILY         WRIT           WORK           MAN
    COUNT        FURLOUGH       RELEASE         DAYS
    ----------------------------------------------------

    FORWARD                                     484

    NEW CNT                                     497
```

CN030 U.S. DEPARTMENT OF JUSTICE RP-1.2.3 POP. DATA

BUREAU OF PRISONS VERIFIED BY:-------------

INSTITUTION: 153-NEW YORK (F) DATE: 09-02-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	8	8	26	42
RECEIVED	0	0	2	2
REMOVED	0-	0-	1-	1-
COUNT	8	8	27	43

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			42
NEW CNT			43

LN030 U.S. DEPARTMENT OF JUSTICE [illegible]

BUREAU OF PRISONS

VERIFIED BY:

DATE: 09-01-76

INSTITUTION: 183-NEW YORK (F)

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	8	7	28	43
RECEIVED	0	1	0	1
REMOVED	0-	0-	2-	2-
COUNT	8	8	26	42

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			000
NEW CNT			42

CUMULATIVE TOTAL MAN DAYS 42

9N030

U.S. DEPARTMENT OF JUSTICE

BUREAU OF PRISONS

BP-1,2,3 POP. DATA

VERIFIED BY:-------------

INSTITUTION: 158-NEW YORK (M)

DATE: 09-01-76

DAILY COUNT	SERVING SENTENCE	SENTENCED HOLDOVERS	UNSENTENCED INMATES	TOTAL
FORWARD	94	155	235	484
RECEIVED	1	20	9	30
REMOVED	1-	25-	4-	30-
COUNT	94	150	240	484

030

DAILY COUNT	WRIT FURLOUGH	WORK RELEASE	MAN DAYS
FORWARD			000
NEW CNT			484

CUMULATIVE TOTAL MAN DAYS 484

will please take notice that a
hich the within is a copy, was this day
entered in the within entitled action,
he office of the Clerk of this Court.

ated, N. Y., ________________, 19____

Yours, etc.,

____
United States Attorney
Attorney for ________

____
Attorney for ________

---

ease take notice that the within ______
be presented for settlement and sig-
re to the Honorable ________________
ted States District Judge, at the office of
Clerk, United States Courthouse, Foley
are, Borough of Manhattan, City of New
k, on the ____ day of ____, 19 ____, at
0 o'clock in the ______ noon or as soon
eafter as counsel can be heard.

ated; N. Y., ________________, 19____

Yours, etc.,

____
United States Attorney
Attorney for ________

____
Attorney for ________

Form No. USA-33s-240
(Rev. 6-1-76)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel.
WOLFISH, *et al.*,

Relators,

v.

EDWARD LEVI, *et al.*,

Respondents.

AFFIDAVIT

75 Civ. 6000(MEF)

ROBERT B. FISKE, JR.
TEL. 264-3311
(212)791-1966
United States Attorney
Attorney for USA

Due service of a copy of the within is hereby admitted.

New York, 9/27, 19 76

____
Attorney for

To

____
Attorney for

FPI-MI—6-18-76-30M-8677

FPS:n

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA *ex rel.* :
LOUIS WOLFISH, *et al.*,
:
Relators, :
AFFIDAVIT
v. :
75 Civ. 6000 (MEF)
:
EDWARD LEVI, *et al.*,
:
Respondents.
:

- -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

GEORGE H. LOVETT, being duly sworn, deposes and says:

1. I am Chief of Telecommunications and Electronics for the United States Bureau of Prisons, and as such I am familiar with the matters set forth herein.

2. I submit this affidavit in opposition to relators' motion for a preliminary injunction with respect to the proposed changes in telephone service at the Metropolitan Correctional Center.

3. For the past two weeks I have been engaged in extensive discussions with representatives of the New York Telephone Company and the staff of the Metropolitan Correctional Center in an effort to devise a system of telephone service for inmate use which will meet the needs of the inmates without creating an undue risk of fraudulent calls or imposing an excessive administrative burden on the Metropolitan Correctional Center.

4. Among the proposals discussed was a system which would permit pre-paid long-distance calls. Such a system was rejected as unfeasible for the following reasons:

(26)

FPS:n

a. New York Telephone Company representatives have advised me that the necessary switchboard to be installed at the Metropolitan Correctional Center would not be "transparent" to the pay telephones in the units and to the TSPS (Telephone Company) operator. This means that the time and tolls of all pre-paid calls originating from the Metropolitan Correctional Center would have to be monitored by the Center's own switchboard operator rather than the TSPS operator, since the latter would not be able to identify the coins being placed in the pay telephones.

b. In order to do this monitoring, the Center's switchboard operator would have to manually (1) look up the appropriate toll charges for each long-distance call, (2) advise the caller of the initial charge and listen for the dropping of the coins, (3) dial the call for the inmate, (4) time each call in order to inform the caller when to deposit further payment, and (5) listen for the dropping of the coins again. In the absence of the type of electronic monitoring and automatic recall equipment available to the TSPS operator (the cost of which would be prohibitive to the Center), such a system would impose a heavy burden on the Center's switchboard and would require at least 2-3 operators to handle the 11 trunks with 11 extensions presently proposed by the Center.

c. In the alternative, the Center's switchboard operator could put through long-distance calls without requiring payment until the call had been terminated, and then request the inmate to deposit the full amount of the toll charged. The difficulties with such a procedure would be that (1) the inmate would have to stay on the line for approximately 3-5 minutes while the switchboard operator obtained the charge for the call, thereby delaying the availability of that phone for the next call, and (2) if the inmate hung up or refused to deposit the money to cover the toll, the Center would have to identify that inmate and take steps to collect the charge and prevent the repetition of such abuse.

d. Both of the systems described in subparagraphs b. and c. above would require the collection of the coins from the pay telephones to be done by the staff of the Metropolitan Correctional Center rather than the Telephone Company.

5. With respect to the number of extensions to be installed for long-distance calls, it should be noted that any pre-paid system using pay telephones would

FPS:n

have to be limited to 11 extensions in light of the present riser capability (i.e., the number of available cable pairs) of the building which has just been temporarily expanded. Any further expansion of that capability would require 3-6 months to complete the engineering, procurement, and installation of additional risers.

6. Assuming an average 3-minute interval between each long-distance call on each extension, the telephone system presently being proposed by the Metropolitan Correctional Center would permit approximately 406 10-minute long-distance calls per day.

WHEREFORE, it is respectfully requested that relators' motion for a preliminary injunction be denied.

George H. Lovett
GEORGE H. LOVETT

Sworn to before me this
29th day of September 1976

Ralph I. Lee
Notary Public

RALPH I. LEE
Notary Public, State of New York
No. 41-2[illegible]33 Queens County
Term Expires March 30, 1977

A 302

will please take notice that a ____
ich the within is a copy, was this day
entered in the within entitled action,
office of the Clerk of this Court.

ted, N. Y., ______________, 19 ____

Yours, etc.,

United States Attorney
Attorney for ____________

Attorney for ____________

ase take notice that the within ____
be presented for settlement and sig-
re of the Honorable ____________
d States District Judge, at the office of
Clerk, Room 601, United States Court-
e, Foley Square, Borough of Manhat-
City of New York, on the ____ day of
____, 19 ____, at 10:30 o'clock in the
____ noon or as soon thereafter as coun-
an be heard.

ated, N. Y., ______________, 19 ____

Yours, etc.,

United States Attorney
Attorney for ____________

Attorney for ____________

Form No. [illegible]
(Rev. [illegible])

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.
LOUIS WOLFISH, et al.,

Relators,

v.

EDWARD LEVI, et al.,

Respondents.

AFFIDAVIT

75 Civ. 6000 (MEF)

ROBERT B. FISKE, JR.

TEL. ~~264-3311~~ 791-1973
United States Attorney
Attorney for U.S.A.

Due service of a copy of the within is hereby admitted.

New York, 4pm 9/29 19 76

Attorney for

To

Attorney for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.
LOUIS WOLFISH, et al.,

Relators,

-against-

THE HONORABLE EDWARD LEVI, Attorney General of the United States;

NORMAN W. CARLSON, Director, United States Bureau of Prisons; and

LARRY TAYLOR, Warden, Metropolitan Correctional Center, New York City,

Respondents.

AFFIDAVIT

75 Civ. 6000 MEF

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MICHAEL YOUNG, being duly sworn, deposes and says:

I am an attorney associated with the Federal Defender Services Unit of The Legal Aid Society, assigned to represent the relator calss in the above-captioned proceeding. I make this affidavit in support of an application for an order pursuant to Rule 19 of the Federal Rules of Civil Procedure making the New York Telephone Company a respondent in this proceeding, amending the caption to include the New York Telephone Company as a named party-respondent, and directing the issuance and service of process upon the Company.

This proceeding is a class action on behalf of the persons confined at the Metropolitan Correctional Center, 150 Park Row, New York, New York, challenging the conditions of their confinement. Both the original pro se petition filed on November 28, 1975, and the amended petition filed on January 12, 1976, asserted that the inadequacy of telephone service for relators at MCC violated their legal and constitutional rights.

On September 13, 1976, counsel for relators was advised by counsel for respondents that the New York Telephone Company intended substantially to restrict telephone services for relators at MCC.

On September 14, 1976, this Court granted temporary restraining orders against the respondents and the New York Telephone Company, enjoining them from restricting telephone services to relators at MCC pending the determination of relators' application for a preliminary injunction against respondents to the same effect.

Upon information and belief, the New York Telephone Company has a monopoly on the provision of telephone services to institutions such as MCC in the New York area.

On the basis of discussions over the past two weeks, it appears that the relief sought by relators cannot be provided unless the New York Telephone Company is made a party to this action. The New York Telephone Company is subject to service of process and its joinder will not deprive this Court of jurisdiction.

WHEREFORE, it is respectfully requested that this Court issue an order making the New York Telephone Company a party-respondent to this proceeding.

MICHAEL YOUNG

Sworn to before me this
29 day of September 1976

Conway Boone
Notary Public

CONWAY D. BOONE
Notary Public, State of New York
No. 41-5343060
Qualified in Queens County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel. LOUIS WOLFISH, HELEN ROMERO, CHARMAINE ROBINSON, MARYANNE CALLAHAN, GERALDINE HARKER, FRANCIS WOODS, DANA DYNES, WILLIE S. McCARTHA, ESTELLA FERNANDEZ, MARGARET RUSSELL, RUTH SMITH, CYNTHIA EDWARDS, BIRCHEL L. CARSON, SHERMAN GREENE, MILDRED SKEETE, MARY JORDAN, DORRIS DORRS, CARMEN ESTRADA, JEREMIAH O'SULLIVAN, MAXIMA VIDAL ORTIZ, ANTHONY VICTORY, JANET FALLEY, GORDON HAGEN, GARRY LEE, LINDA SESSONS, *et al.*,

Relators,

-against-

THE HONORABLE EDWARD LEVI, Attorney General of the United States;

NORMAN CARLSON, Director, U.S. Bureau of Prisons; and

LARRY TAYLOR, Warden, Metropolitan Correctional Center, *et al.*,

Respondents.

SUPPLEMENTAL AFFIDAVIT

75 Civ. 6000 MEF

STATE OF NEW YORK } ss.:
COUNTY OF NEW YORK }

MICHAEL YOUNG, being duly sworn, deposes and says:

I am an attorney associated with the Federal Defender Services Unit of The Legal Aid Society, assigned by this Court to represent the relators and relator class in this proceeding. I make this affidavit in support of an application for a preliminary injunction, pursuant to Rule 65, Federal Rules of Civil Procedure, enjoining the respondents and their agents and employees from restricting or permitting restriction of the phone services for relators at MCC.

This affidavit is intended to supplement the information contained in my affidavit of September 14, 1976, in support of relators' application for an order to show cause why respondents should not be enjoined from restricting or permitting restriction of phone services at MCC. (A copy of the application and affidavit are attached hereto as exhibit A).

At the chambers conference between the parties and this Court on September 14, 1976, respondents clarified that the proposed restrictions on phone service at MCC were as follows:

> (1) The number of pay phones would be reduced to one in each housing unit and two in the dorm unit (11S).
> (2) These pay phones could be used only to make calls within the 212 area (New York City).
> (3) Each housing unit would also have one phone (two in the dorm unit) from which inmates could make long-distance calls through a switchboard within MCC.
> (4) A long-distance phone would also be placed in the honor unit, although not in the hospital ward. Inmates in the hospital ward would have to make special arrangements to place long-distance calls.
> (5) Residents of each housing unit would be permitted to make long-distance calls only between 12 noon and 8 p.m. every other day.
> (6) Inmates would be permitted to make long-distance calls either by charging them to their commissary account or by asking the person being called to accept the charges.
> (7) All long-distance calls would be limited to five minutes in length.
> (8) Inmates would be required to "sign-up" in advance in order to make a long-distance call.

At the conclusion of the conference, this Court signed the order to show cause, granted the temporary restraining order, and also granted a temporary restraining order against the phone company [fn1] pending a determination of the application for a preliminary injunction.

On September 17, 1976, counsel for respondents submitted a proposed settlement of this issue to me.[fn2] This proposal was identical to the restrictions on phone service discussed at the conference in chambers on September 11, 1976, with three exceptions:

[fn1] - A copy of this temporary restraining order against the phone company is attached hereto as exhibit D.
[fn2] - This proposal is attached hereto as exhibit B.

(1) The twenty-three coin-operated pay phones presently located in the housing units would be retained for calls within the 212 area.

(2) Except in emergency situations, inmates would be required to make all long-distance calls collect.

(3) Residents of each housing unit would be able to make long-distance calls between noon and 8 p.m. every day. However, only five of the eleven long-distance phones in the institution could be used at any one time thus permitting persons to place long-distance calls in only half of the housing units at any one time.

Relators have requested that respondents take legal action against the phone company or bring a representative of the phone company to the hearing on the preliminary injunction, but they have declined to do so.

I have spoken to persons presently confined at MCC, relators in this case, and they have advised me that the proposed restrictions in telephone services would cause them irreparable injury in that:

(1) Relators whose family, friends, or attorneys live outside the 212 area will be severely restricted in their opportunities to communicate with them, including the hours of the day when they can make such calls, the procedures such as the "sign-up" they must follow to place such calls, the limit of five minutes for such calls, and the fact that only five of the approximately five hundred inmates at MCC can make long-distance calls at one time.

(2) Relators needing to speak to a family member or attorney for more than 5 minutes will be forced to incur the expense and inconvenience of a second call at a later time.

[illegible]

(3) Inmates whose family or friends cannot or will not accept a collect call will be unable to place such calls.

(4) Inmates and the persons they call long-distance will be burdened with the increased costs charged by the phone company for collect calls over long-distance calls dialed directly and paid for by the caller.

(5) Inmates will be subjected to delays in placing their calls by having to place them through an MCC switchboard.

(6) These restrictions on phone services will further increase the tension, conflict and other serious ramifications resulting from the inadequacy of phone services as they presently exist at MCC.

As a result of being counsel for relators in this case, and as a result of representing persons confined at MCC in other court proceedings, I constantly find it necessary to place calls through the existing switchboard at MCC. These calls, even when placed during business hours, are rarely answered promptly. For at least half of these calls, the phone rang at least five minutes before it is answered. On one occasion, the phone rang sixteen minutes before it was answered. On two other occasions, I found it necessary to walk over to MCC because I could not get the switchboard to answer my calls.

[illegible]

WHEREFORE, it is respectfully requested that this Court issue a preliminary injunction enjoining respondents from restricting or permitting restriction of phone services currently available to persons confined at MCC.

MICHAEL YOUNG

Sworn to before me this
21st day of September, 1976.

Notary Public

PHYLIS SKLOOT BAMBERGER
Notary Public, State of New York
No. 31-4500131
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.
LOUIS WOLFISH, HELEN ROMERO,
CHARMAINE ROBINSON. MARYANNE
CALLAHAN, GERALDINE HARKER,
FRANCIS WOODS, DANA DYNES,
WILLIE S. McCARTHA, ESTELLA
FERNANDEZ, MARGARET RUSSELL,
RUTH SMITH, CYNTHIA EDWARDS,
BIRCHEL L. CARSON, SHERMAN
GREENE, MILDRED SKEETE, MARY
JORDAN, DORRIS DORRS, CARMEN
ESTRADA, JEREMIAH O'SULLIVAN,
MAXIMA VIDAL ORTIZ, ANTHONY
VICTORY, JANET FALLEY, GORDON
HAGEN, GARRY LEE, LINDA SESSOMS,
et al.,

Relators,

-against-

THE HONORABLE EDWARD LEVI,
Attorney General of the United
States;

NORMAN CARLSON, Director, U.S.
Bureau of Prisons; and

LARRY TAYLOR, Warden, Metro-
politan Correctional Center,
et al.,

Respondents.

ORDER TO SHOW CAUSE
AND TEMPORARY
RESTRAINING ORDER
75 Civ. 6000 MEF

Upon the amended petition, the prior proceedings in this case, and the affidavit of Michael Young annexed hereto, it is hereby

ORDERED, that the respondents show cause before this Court at Room ____ on ________________, 1976, at ______ o'clock __.m., why a preliminary injunction should not be issued herein, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining the respondents, their agents and employees, pending a final hearing and determination of this action, from restricting or permitting restriction of the number of telephones or the scope of telephone services currently available to persons confined at MCC; and it is further

ORDERED, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, that the respondents are temporarily restrained from restricting or permitting restriction of the number of telephones or the scope of telephone services currently available to persons confined at MCC pending the hearing and determination of the application for a preliminary injunction; and it is further

ORDERED, that service of this order, together with a copy of the papers attached hereto, on or before ____:____ __.m. on ____________________, 1976, be deemed sufficient notice.

Dated: New York, New York
September , 1976

____
MARVIN E. FRANKEL
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel. LOUIS WOLFISH, HELEN ROMERO, CHARMAINE ROBINSON, MARYANNE CALLAHAN, GERALDINE HARKER, FRANCIS WOODS, DANA DYNES, WILLIE S. McCARTHA, ESTELLA FERNANDEZ, MARGARET RUSSELL, RUTH SMITH, CYNTHIA EDWARDS, BIRCHEL L. CARSON, SHERMAN GREENE, MILDRED SKEETE, MARY JORDAN, DORRIS DORRS, CARMEN ESTRADA, JEREMIAH O'SULLIVAN, MAXIMA VIDAL ORTIZ, ANTHONY VICTORY, JANET FALLEY, GORDON HAGEN, GARRY LEE, LINDA SESSOMS, *et al.*,

Relators,

-against-

THE HONORABLE EDWARD LEVI, Attorney General of the United States;

NORMAN CARLSON, Director, U.S. Bureau of Prisons; and

LARRY TAYLOR, Warden, Metropolitan Correctional Center, *et al.*,

Respondents.

AFFIDAVIT

75 Civ. 6000 MEF

STATE OF NEW YORK } ss.:
COUNTY OF NEW YORK }

MICHAEL YOUNG, being duly sworn, deposes and says:

I am an attorney associated with the Federal Defender Services Unit of The Legal Aid Society, assigned by this Court to represent the relators and relator class in this proceeding. I make this affidavit in support of an application for an order to show cause why this Court should not issue a preliminary injunction, pursuant to Rule 65, Federal Rules of Civil Procedure, enjoining the respondents and their agents and employees from restricting or permitting restriction of the number of telephones or the scope of telephone services currently available to persons confined at MCC, and for an order temporarily restraining respondents from restricting or permitting restriction of the number of telephones or the scope of telephone services currently available to persons confined at MCC pending the hearing and determination of the application for a preliminary injunction.

The factual information in this affidavit is based on documents provided by relators and respondents and conversations I have had with inmates at MCC and representatives of the U.S. Attorney's office for the Southern District of New York, attorneys for respondents.

In the amended petition filed in this proceeding on January 12, 1976, relators claimed that their legal and constitutional rights were being violated at MCC because:

> Insufficient public telephones are provided to meet the needs of the inmates, causing tension and fights among inmates over the use of the phones.
>
> (Id. at p.10, ¶67).

At the present time MCC has the following number of pay telephones available for use by the inmates:

Unit	Number of Pay Phones
Honor Unit (and hospital)	2
3	1
5N	2
5S	2
7N	2
7S	2
9N	2
9S	2
11N	3
11S	3

(See respondents' "response to Interrogatory #16"). Inmates can use these phones in the same manner in which the general public uses pay phones; thus, they can make local calls by paying 10¢ for the first three minutes, and long distance calls either by paying for the call in coins deposited in the phone, making a collect call, or charging the call to a telephone credit card or a home or office phone number. Inmates can use the phones at any time of the day or night except for the periods when they are locked in their rooms.

On or about September 9, 1976, I received a copy of a letter from respondents' counsel to this Court advising that the New York Telephone Company had informed respondent Warden Taylor that "it plans within the very near future on converting [the pay phones in the residential units at MCC] to 'restricted dialing' which would permit phone calls only to telephones within area codes 212, 914, 516, and 201." The letter further explained that respondents were "discussing with representatives of the New York Telephone Company possible alternatives and the time schedule for this proposed conversion" but that they "cannot presently anticipate the outcome of these discussions, but will keep the Court and counsel informed." (A copy of this letter is attached hereto as Exhibit A).

On Monday, September 13, 1976, I was orally advised by counsel for respondents that as of Wednesday, September 15, 1976, the New York Telephone Company would restrict services in the housing units at MCC as follows:

1. The number of pay phones will be reduced to one in each housing unit and two in the dorm units (11S).

2. These pay phones can be used only to make calls within the 212 area (New York City).

3. Each housing unit will also have one

phone (two in the dorm unit) from which inmates can make long-distance calls through a switchboard within MCC during a limited and as yet undetermined period each day.

4. Inmates will be permitted to make long distance calls only if the person being called accepts the charges. They will not be permitted to pay for their own long-distance calls.

5. There will be no long-distance telephone in the hospital or honor unit. Inmates in those units will have to make special arrangements to place long-distance calls.

Relators, by this application, seek to prevent these restrictions of phone services currently available to them. Respondents may prevent such curtailment of services either by negotiation or legal action against the New York Telephone Company or by providing an alternative means of insuring such phone services to relators, as through substantial expansion of the MCC switchboard system currently planned for long-distance telephoning.

Telephones play a significant role in the daily lives of ordinary citizens. For persons confined to a detention facility, the telephone becomes a crucial link with the outside world, one of the few means available to communicate with attorneys and bondsmen and to maintain ties with family and friends. As such, the availability of telephone services is equally as fundamental in significance as visiting opportunities. As this Court found, in forbidding respondents from restricting visiting at MCC:

> People in confinement possess an expanding array of basic human rights.... Central among these rights is the opportunity to communicate and visit with kin and with friends [citation omitted] ... a reciprocal

> opportunity protected in law for those on the outside as well as those inside.... The presumption is that these basic rights should be unfettered; restrictions on such valued rights must be justified by the requirements of the prison environment.
>
> United States ex rel. Wolfish v. Levi, 406 F.Supp. 1243, 1247 (S.D.N.Y. 1976). Emphasis added.

Indeed, for those relators whose friends and kin live at a distance or are physically unable to travel to the prison, the phone may be a more valued service than the opportunity to visit.

That the availability of telephone service is an issue cognizable by this Court is established by the fact that it has been found to be an issue of constitutional significance in federal district courts adjudicating conditions in state jails. See, e.g., Manicone v. Cleary, 74 Civ. 575 (D.C.N.Y., June 30, 1975); Dillard v. Pitchess, 399 F.Supp. 1225 (C.D.Cal., 1975); Marion County Jail Inmates v. Broderick, 72 Civ. 424 (S.D.Ind., March 24, 1976); Inmates of Suffolk County Jail v. Eisenstadt, 360 F.Supp. 676 (D.Mass. 1973); Brenneman v. Madigan, 343 F. Supp. 128 (N.D.Cal. 1972); Hamilton v. Love, 70 Civ. 201 memorandum opinion (ED Ark. June 22, 1971). Indeed, numerous of these cases ordered provision of a certain number of free telephone calls, a practice considerably more liberal than services presently available at MCC. (See, e.g., Manicone v. Cleary, supra; Cain v. Perk, 74 Civ. 569 (N.D.Ohio, September 25, 1974)). Moreover, it is significant that many of these cases, although litigating conditions in jails serving courts of limited geographic jurisdiction, made substantial provision for long-distance calls. At MCC, which serves as a pretrial detention facility for courts in the Southern and Eastern Districts of New York, as well as the District of New Jersey, unrestricted long-distance phone service becomes a substantially more important component of relators' access to counsel and the courts.

The inadequacy of telephone services as they currently exist at MCC is a matter of serious concern to relators, as evidenced by the inclusion of this issue in both the pro se and amended petitions. A random survey of persons incarcerated at MCC by Harvey N. Alter, criminologist, produced the following results concerning the inadequacy of existing phone services:

> Q. Have you ever had to wait longer than one-half hour to use the phone?
>
> A. Yes, 126; no, 12.
>
> Q. To the best of your knowledge, is the limited number of phones at MCC a source of tension and/or conflict among the inmates?
>
> A. Yes, 134; no, 5.

Moreover, I have been advised by present and former inmates at MCC that the inadequacy of phone services was the immediate cause of the food strike in the dormitory unit at MCC last spring. I have been further advised that the only homicide which has occurred to date at MCC resulted from an argument over the use of one of the limited number of pay phones available for inmate use.

I have been advised by an attorney with the Prisoners' Rights Unit of The Legal Aid Society that the phone services provided to persons confined in New York City detention facilities are less restrictive than those which will go into effect at MCC on Wednesday.

Respondents appear to concede in their letter of September 9, 1976, that the proposed changes will be more restrictive than the phone services currently provided. In any event, this fact cannot be seriously disputed. The number of phones on which long-distance calls can be made will be reduced by more than one-half, and the hours during which such calls may be placed will be severely curtailed. Inmates will no longer be permitted to pay for their own long-distance calls, even by coin, but will be forced to rely on the person they are calling to accept charges.

Individuals whose attorneys, family, or friends reside or work outside New York City will be able to call those individuals only during the limited hours during which their units are permitted to make long-distance calls.

As this Court stated in granting the preliminary injunction on visiting:

> In the face of an unquestioned worsening of the status quo, a preliminary injunction
>
> > "serves as an equitable policing measure to prevent the parties from harming one another during the litigation; to keep the parties, while the suit goes on, as far as possible in the respective positions they occupied when the suit began."
>
> Hamilton Watch Co. v. Benrus Watch Co., ... 206 F.2d at 742; see also Benson Hotel Corp. v. Woods, 168 F.2d 694, 696 (8th Cir. 1948); Capobianco v. First Nat. Bank of Palmerton, 372 F.Supp. 416, 421 (M.D.Pa. 1974)....
>
> ... [C]hanges for the worse in the already contested situation are not to be encouraged. They ought surely not to happen without reasonable advance notice and an opportunity for orderly consideration.
>
> United States ex rel. Wolfish v. Levi, supra, 406 F.Supp. at 1249-1250.

Similar considerations require the issuance of the requested injunction in the present proceeding.

I hereby certify that I have given oral notice to attorneys for respondents of my intention to seek a temporary restraining order and preliminary injunction.

I am proceeding by order to show cause because I was given less than forty-eight hours' notice of the specific nature of the restrictions and the date on which they would go into effect.

Since the new restrictions are scheduled to go into effect on September 15, 1976, relators will suffer irreparable harm as set forth above unless a temporary restraining order is issued pending the decision of this Court as to whether to grant a preliminary injunction. The normal notice requirements for an application for a preliminary injunction should therefore be dispensed with in this instance, and a temporary restraining order issued pending litigation of the request for a preliminary injunction.

Relators are not requesting taht this Court order the respondents to take affirmative action, but only to maintain the status quo and not permit more restrictive conditions to develop at MCC during litigation of this action.

WHEREFORE, it is respectfully requested that this Court order the respondents to show cause why the Court should not issue a preliminary injunction enjoining the respondents and their agents or employees from restricting or permitting restriction of the number of pay telephones or the scope of telephone services currently available to persons confined at MCC, and that the Court temporarily restrain the respondents from restricting or permitting restriction of the number of phones or the scope of telephone services currently available to persons confined at MCC pending the hearing and determination of the motion for a preliminary injunction.

MICHAEL YOUNG

Sworn to before me this
14th day of September 1976

Phylis Skloot Bamberger
Notary Public

PHYLIS SKLOOT BAMBERGER
Notary Public, State of New York
No. 31 [illegible]31
Qualified in New York County
Commission Expires March 30, 1977

United States Department of Justice

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
ONE ST. ANDREW'S PLAZA
NEW YORK, NEW YORK 10007

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

LC:bj
d-231

September 17, 1976

BY HAND

Michael Young, Esq.
Legal Aid Society
Room 509
United States Courthouse
Foley Square
New York, New York

Re: United States ex rel Wolfish v. Levi,
75 Civ. 6000 (MEF)

Dear Mr. Young:

The following is a description of the telephone system which is proposed for installation at the MCC:

Local Calls

The present total of 23 pay telephones would be converted to "restricted dialing" which would permit calls only to the 212 area code. The distribution of these telephones would be the same as under the present system which is as follows:

Unit	# of pay phones
Honor Unit	1
Hospital	1
3	2
5 N	2
5 S	2

A 321

7 N	2
7 S	2
9 N	2
9 S	2
11 N	3
11 S	4

These telephones would be available for inmate use from 6:30 A.M. to 11:00 P.M. (except during counts), as is the present case.

Long Distance Calls

2. A total of 11 long-distance telephones, routed through a switchboard at the MCC, would be installed on a 5-trunkline system. These long-distance telephones would be distributed in the residential units as follows:

Unit	# of Long Distance Telephones
Honor Unit	1
3	1
5 N	1
5 S	1
7 N	1
7 S	1
9 N	1
9 S	1
11 N	1
11 S	2

LC:bj
d-231

Inmates in the Hospital Unit would be given access to the long distance telephone on an individual basis. The switchboard would be open for an eight-hour period each day, seven days per week; the tentative schedule is from Noon to 8:00 P.M. Inmates would be permitted to make collect calls through this switchboard. In a situation where a collect call will not be accepted by an inmate's attorney, and the MCC has been able to verify this, the inmate will be permitted to charge a long distance call to his commissary account, provided that the inmate gives the MCC written authorization for this charge. This same procedure for charging long distance calls to a commissary account will be available for calling family in an emergency situation. Long distance calls would be limited to 5 minutes in duration, and a "sign-up" book would be instituted in an attempt to assure equitable access to the long distance lines. This proposed schedule for long distance phone calls would, of course, be subject to review so that, where appropriate, reasonable and feasible adjustments to the system could be made to reflect the MCC's experience with this system.

As is presently the MCC's policy, emergency need for a telephone will be handled on a case-by-case basis.

The officials at the MCC, after consultation with representatives of the New York Telephone Company, believe that under the present circumstances this proposed system is reasonable and feasible. As we previously informed you, these changes have been proposed as a means to correct a substantial and growing problem of fradulent long-distance telephone calls originating from the pay phones in the residential units at the MCC.

LC:bj
d-231

We request that you review this proposal, and if you have any questions or comments you so advise us at the earliest possible time. We await your response so that, if possible, we can reach an accommodation on your motion for a preliminary injunction. Of course, any accommodation we would reach would be without prejudice to either party's ultimate position on the question of access to and availability of telephone service at the MCC.

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By: LOUIS G. CORSI
Assistant United States Attorney
Tel.: (212) 791-1966

WGB:lm

September 9, 1976

BY HAND

Hon. Marvin E. Frankel
United States District Judge
United States Courthouse
Foley Square
New York, N.Y.

C

Re: United States ex rel Wolfish v. Levi
75 Civ. 6000 (MEF)

Dear Judge Frankel:

We wish to inform the Court and, by copy of this letter, counsel for the Relators that the New York Telephone Company has informed Warden Taylor that because of the number of fraudulent long-distance telephone calls originating from the pay phones at the MCC (in the amount of approximately $100,000 in the past six months) it plans within the very near future on converting those phones to "restricted dialing" which would permit phone calls only to telephoneswithin area codes 212, 914, 516 and 201.

The Government is presently discussing with representatives of New York Telephone Company possible alternatives and the time schedule for this proposed conversion. We can not presently anticipate the outcome of these discussions, but will keep the Court and counsel informed.

Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney

By:
LOUIS G. CORSI
Assistant United States Attorney
Tel.: (212) 791-1966

LGB:

Hon. Marvin E. Frankel -2- September 9, 1976
United States District Judge

cc: Legal Aid Society
Criminal Appeals Bureau
U.S. Courthouse
Foley Square
New York, N.Y.

Att: Michael Young, Esq.

LGC:n

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Filed 9/17/76

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UNITED STATES OF AMERICA :
ex rel. Louis Wolfish, *et al.*,
:
Relators, **ORDER**
:
v. 75 Civ. 6000 (MEF)
:
HONORABLE EDWARD LEVI,
et al., :

Respondents. :

- - - - - - - - - - - - - - - - - - - -x

The attached Order To Show Cause and Temporary Restraining Order having been signed, and in furtherance of the effective compliance with said Temporary Restraini Order by Respondents herein, it is hereby

ORDERED, that the New York Telephone Company, and its agents, officers, and employees, are enjoined from removing any of the telephone lines, extensions or receivers presently in use at the Metropolitan Correctional Center or from restricting or altering in any way the telephone service presently being provided to and within said Metropolitan Correctional Center or of taking any other action which would interfere in any way with Respondents' compliance with said Temporary Restraining Order pending the duration of said Temporary Restraining Order and the determination of Relators' motion for a preliminary injunction herein; and it is further

ORDERED, that service of this Order upon the New York Telephone Company by 12:00 PM. on September 15, 1976 shall be deemed good and sufficient service.

Dated: New York, New York
September 14, 1976

/s/
MARVIN E. FRANKEL
United States District Judge

(19)

U. S. DISTRICT COURT
FILED
OCT 1 1976
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :
ex rel. Louis Wolfish, *et al.*, :

Relators, :

v. :

HONORABLE EDWARD LEVI, *et al.*, :

Respondents. :

- x

ORDER

75 Civ. 6000 MEF

This cause came on for a hearing on September 21, 1976, on the New York Telephone Company's motion to vacate this Court's Order granted *ex parte* on September 14, 1976, enjoining the New York Telephone from removing, altering or interfering with certain telephone lines, extensions or receivers in use at the Metropolitan Correctional Center, 150 Park Row, New York City, New York, and the Court having heard the argument of counsel and being fully advised, it is

ORDERED, that the New York Telephone Company's motion be and the same hereby is granted, and it is further

ORDERED, that this Court's Order granted *ex parte* on September 14, 1976, be and the same hereby is in all respects vacated.

Dated: New York, New York
September 21 , 1976

Marvin E. Frankel
MARVIN E. FRANKEL
United States District Judge

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
OCT 1 1976
S.D. OF N.Y.

UNITED STATES ex rel.
WOLFISH, et al.,

Relators,

v.

EDWARD LEVI, et al.,

Respondents.

PRELIMINARY INJUNCTION

75 Civ. 6000 (MEF)

Relators having brought on, by order to show cause dated September 14, 1976, a motion for a preliminary injunction regarding telephone services available for inmate use at the Metropolitan Correctional Center ("MCC"), which motion the Respondents have opposed, and upon all the papers and proceedings herein, it is hereby

ORDERED, that the Respondents provide, or cause to be provided, the following telephone services for inmates at the MCC:

A. Local Calls

The present total of 23 pay telephones will be converted to "restricted dialing" which will permit calls only to the 212 area code. The distribution of these telephones will be the same as under the present system which is as follows:

Unit	Number of Pay Telephones
Honor Unit	1
Hospital Unit	1
3	2
5N	2
5S	2
7N	2
7S	2

(33)

MICROFILM
OCT 0 4 1973

Unit	Number of Pay Telephones
9N	2
9S	2
11N	3
11S	4

These telephones will be available for inmate use from 6:30 A.M. to 11:00 P.M. (except during counts), as is the present case.

B. Long-Distance Calls

([illegible]spondents will install twenty-two long-distance tel[illegible]n an eleven trunkline system, to be routed throug[illegible]itchboard which is to be installed at the MCC; these long-distance telephones are to be distributed as follows:

Unit	Number of Long-Distance Telephones
Honor Unit	2
3	2
5N	2
5S	2
7N	2
7S	2
9N	2
9S	2
11N	2
11S	4

(2) Inmates will be permitted to make (i) collect calls without following the procedures hereinafter described in subparagraph (a) through (f) and (ii) calls charged to their commissary accounts in the manner hereinafter described in subparagraphs (a) through (f) through

this long distance switchboard. Advance written authorization by the inmate will be required for each call that an inmate wishes to charge to his or her commissary account; such a commissary charge call shall be made in the following manner:

(a) An inmate must convey a written authorization for each commissary charge call, including the telephone number which is to be called, to the MCC commissary by presenting said authorization to a designated housing unit officer. A separate authorization must be submitted for each such call.

(b) If the inmate's commissary account has a balance of at least $10.00 and the requested charge call is within the continental United States, the written authorization for a commissary charge call must be presented to the designated housing unit officer at least 4 hours before the time said inmate wishes to make his or her call, and upon approval by the MCC commissary the said authorization will be delivered to the long distance operator.

(c) An inmate who has less than $10.00 in his commissary account or wishes to charge a call outside the continental United States must present the necessary authorization to the designated housing unit officer at least 24 hours in advance of the time said inmate wishes to make such a call so that MCC officials can confirm in advance that he or she has sufficient funds in his or her commissary account to pay for the cost of that call.

(d) At the time an inmate wishes to make a commissary charge call for which he or she has previously submitted written authorization as provided in 2(a)--2(c), said inmate will pick up the long-distance telephone in his or her housing unit and identify (i) himself or herself to the operator, and (ii) the call which he or she wishes to charge to his or her commissary account. The operator, upon determining that the inmate has provided written authorization for that call and that the MCC commissary has approved said call, will place the call.

(e) Inmates will be provided with a written receipt for each commissary charge call which is made.

(f) If an inmate's commissary account has insufficient funds to meet the requirements of 2(b) or (c) supra, the long distance operator will not place the requested commissary charge call.

C. Miscellaneous Provisions for Long-Distance Calls

(1) All long-distance calls will be limited to ten minutes in length. This ten-minute period will commence when the party being called answers the phone.

(2) A sign-up list will be posted by each phone to encourage orderly and equitable use of the phones.

(3) Emergency need for a telephone, including those instances where an inmate does not have funds for a needed telephone call, will be handled on a case-by-case basis, as is the present MCC policy.

(4) Inmates in the Hospital Unit will be given access to the long-distance telephone on an individual basis.

(5) The switchboard for long-distance calls will be open for eight hours each day, seven days per week, from 1:00 P.M. to 9:00 P.M..

D. Compliance With This Order

(1) Two weeks after the telephone system set forth in this order is fully operational, counsel for relators will be permitted to visit each of the housing units at MCC to determine the effect of these alterations on telephone services for relators at MCC. At that time, counsel will also be permitted to observe the operation of the switchboard.

(2) The current system of telephone services will not be disconnected or restricted until the system set forth in this Order is fully operational.

The provisions of this Order will remain in effect until further Order of this Court or until final disposition of this case.

Dated: New York, New York

September 30, 1976

Marvin E. Frankel

MARVIN E. FRANKEL
United States District Judge

MD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

United States of America ex rel.
Louis Wolfish, et al.,

Relators,

v.

75 Civ . 6000

United States of America,
Edward H. Levi, et al.,

Respondents.

---------------------------------------x

September 21, 1976
4:40 p.m.

BEFORE:

HON. MARVIN E. FRANKEL,

District Judge

APPEARANCES:

Michael Young, Esq.,
Phyllis Bamberger, Esq.,
Attorneys for Relators

Louis Corsi, Esq.,
Frederick Schaffer, Esq.,
Assistant United States Attorneys
Attorneys for Respondents

Burton K. Katkin, Esq.,
Attorney for New York Telephone Company

THE COURT: I see the Telephone Company has somebody here. Has it been made a party to this?

MR. KATKIN: No, your Honor, we have not been made a party to the proceedings but your Honor will recall that a week ago today you issued an order directed to the Telephone Company restraining the company from in any way modifying or changing its facilities provided at the MCC and that is why we are appearing here today seeking to have that order lifted.

THE COURT: It is an order of dubious value made in the heat of what was presented to me as an emergency, but I think somebody better make the Telephone Company a party to this case if we are going to be fighting about the telephone service.

Have you had time to think about that, Mr. Young? Do you propose to do that?

MR. YOUNG: We have requested the respondents in this case to take legal action against the Telephone Company.

THE COURT: Why can't you move against the Telephone Company yourself if you are complaining about telephone service? Why do they have to do everything for you?

MR. YOUNG: We feel we are in a legal contest with the people who operate the institution over there, that they have every one of several options by which to remedy the condition which we are challenging, one of which would be taking legal action against the Telephone Company.

THE COURT: I understand you, and you may just be in trouble on that score. I have given you all the legal advice I feel I ought to give the Community Defender Service.

As long as you are up -- it is Mr. Katkin?

MR. KATKIN: Yes, your Honor.

THE COURT: Why don't I hear you a little bit later, because your application may become moot or it may be necessary for me to deal with it. Let me first see where the people who are actually parties to this proceeding stand as of today.

MR. KATKIN: I am here and willing to remain as long as your Honor pleases to straighten it out.

THE COURT: Thank you. I hope that is not very long.

I have received these papers only just within the hour, at least some of them. It struck me, Mr. Young, though I will stand corrected if necessary, that a good way to start our conversation this afternoon might be with Warden Taylor's affidavit because it contains a proposed mode of dealing with the problem which raises a question or two in my mind, but except for those questions seems to me to be a conceivable working solution of the immediate problem.

I would like to have your views on what Mr. Taylor proposes.

MR. YOUNG: Yes, your Honor.

Our opposition to this proposed settlement is set forth in our memorandum. I will repeat that, since I appreciate the fact that the papers weren't served on you until today, and you probably havan't had a chance to examine them in detail.

Basically, we feel that the Warden's proposed substitute long distance service falls far short of providing satisfactory service to the inmates at the MCC in several respects. At the present time inmates have 23 telephones that they can use for either local or long distance calls. They can pay for those long distance calls --

THE COURT: I know all that. Can you tell me while you are on that whether you have any information as of now regarding the question of how many of those phones at any given time are being used for local calls and how many for long distance calls?

MR. YOUNG: I don't have any information in my possession at this time.

THE COURT: Do you have information in somebody elses' possession?

MR. YOUNG: I can represent to you that inmates have repeatedly advised me, and I can get affidavits, that the phones are in virtually continuous use at MCC.

THE COURT: That is not the question. They can be in use if you are calling your girl friend on Rivington Street for a very long time. My question is if you have any information as to how many are being used for long distance and how many for local calls.

MR. YOUNG: No, I don't.

THE COURT: I can't expect you to have it, but I want to know what is before us. There are now 23 phones interchangeably useable for what we call local or long distance telephone calls.

MR. YOUNG: In respect to your last question, I would point out one fact within our possession, namely, -that a large number of the people presently confined or that have been confined at MCC have either been there for the purpose of court in New Jersey, or have lived outside of the 212 area, and therefore it is reasonable to assume that many of the calls being made from MCC would be long distance calls, many of the calls made on those 23 phones.

THE COURT: It may be reasonable to assume, but that is not like knowing one way or the other. I understand your problem. So at the moment there are 23, and under the Warden's proposal there would be how many?

MR. YOUNG: There would be 23 pay phones limited to the 212 area code, and the 11 phones placed on five trunk lines, meaning only five can be used at any one time.

THE COURT: Is that what that means, Mr. Corsi?

MR. CORSI: Yes.

THE COURT: Why can't you have 11 trunk lines?

MR. CORSI: We feel at the present time a five trunk line system is something manageable for one operator. If it turns out an operator can handle more trunk lines that five then the MCC would be prepared to expand the service, assuming that the need for exapanded service is shown.

As Warden Taylor has indicated in his affidavit this is really a temporary solution to a problem. We want to take a look, see how it works. If it works, fine. If it doesn't, we will have to go back to the drawing board and look.

In addition, we are looking for a long range solution, but these solutions just cannot be created overnight. We think this would take care of an immediate problem.

THE COURT: Your proposal will allow a five-minute limit on long distance calls?

MR. CORSI: Yes. That's a way to try to insure equitable access among all the inmates to the telephone. We calculate with a five minute limitation, and then assuming approximately a three-minute lag between the disconnect on one call and the ability to connect and have the person talking on the next call, would be three minutes. Consequently, we're talking about an eight-minute cycle. With the five trunkline system oper-ting for eight hours a day we anticipate that the operator -ould place up to three hundred calls on any given day.

We have done some preliminary investigation. We think that that number should permit at least one long distance call per day for the inmates in the institution who probably have need for such calls, people who reside outside the 212 area or have their counsel outside the area.

THE COURT: How many such people on an average are there now in the MCC?

MR. CORSI: I can't give you an average, but what I d-d have done today we froze the population today in terms of certain records that are kept, and the analysis prepared is that 263 of the inmates -- the total count is

540 people today. That seems a little high because we feel some of the people who left yesterday their records weren't pulled, but assuming a total of 540, 263 of those people resided in the five boroughs of New York. That would give them access through the 23 pay telephones.

We were able to identify 217 other individuals who resided in an area outside that 212 area code. In addition, there were 60 people whom we couldn't readily identify where they resided. So even if we assumed -- and I don't think this is necessarily a correct assumption -- but assuming that the 60 people that we couldn't identify their addresses, assume that they lived outside the five boroughs, that number in conjunction with the 217 that we have identified as living outside the boroughs is still less than 300, and they would be able to get at least one long distance telephone call per day.

As I indicated, your Honor, even the figure of 540 is much higher than what we certainly have been trying to keep the population at. We have been trying to keep it down as low as possible, and it seems a little bit higher than even any of the averages that we have had in the past six or eight months.

We think that as an initial prop-sal this is quite reasonable, and will insure at least one long distance call per day.

THE COURT: How did you figure out that you could afford only one operator, and in that same connection do you have any comparable arrangements at any of the other facilities of this nature in San Diego, or Chicago, or any other that I have not mentioned?

MR. CORSI: My understanding is in other institutions we can get the service from the telephone company because in other parts of the country their system is not quite as automated as it is here in New York, and you pay additional charges, as indicated in Warden Taylor's affidavit concerning that 50th Street switchboard. That is primarily the switchboard used I think in other institutions.

THE COURT: You are saying the technology is so advanced here that it works out worse for the inmates than here than in more primitive places?

MR.CORSI: In one respect it does, your Honor.

THE COURT: And the Telephone Company -- Mr. Katkin, you might want to tell us about this -- can't revert t horse and buggy era when it can do some good for the purposes of this facility? Is that the size of it?

MR. KATKIN: I think the size of it is simply not that it works out any worse for the inmates, it's just a question of who can provide the manual service, In some other locations outside the metropolitan New York area telephone companies are still utilizing manual switchboards manned by operatos, and it is feasible to have calls originating from public telephones or other telephones channeled into those manual switchboards and at an additional charge have them screened by the telephone company operators.

With the exception of one manual switchboard located in upper Manhattan, and which is scheduled to be retired from service in December of this year, we just do not have the capability at New York Telephone of handling calls that way. The switching is generally automated by electronic switching systems, and so forth. We just don't do manual switching with the volume of traffic to be handled in the metropolitan New York area.

THE COURT: Does the expertise of your people square with the opinion of the Warden that the realistic arrangement or expectation would be that one operator could handle just about five trunklines? Because I have been in primitive law offices where it seems to me the switchboard, the non-civil service switchboard, to be sure, had a lot more than five plugs in it. I don't want to stretch anybody, but that five sounds like a rather leisurely number.

MR. KATKIN: If I may, I would like to make our position perfectly clear here. We are prepared to provide as much in the way of facilities, telephones, trunks, switchboards, as is appropriate.

THE COURT: That's not what I ask you. I know I used a lot of words, so let me try to put it in English. Does your knowledge extend to this subject, and is the Warden right in his belief that one operator can handle only five trunklines?

MR. KATKIN: Your HOnor, my knowledge would not extend to that, and I believe for me to be prepared, or for the company to be prepared, to answer that would require that we do as we do for business locations, a traffic study of the volume and nature of the traffice originating.

As I am sure your Honor can tell from your Honor's own experience depending upon the nature and the volume of the calls through a switchboard one operator might be able to handle as few as three or four lines which are very busy, and in a telephone office one operator can handle substantially more than five trunklines. It would depend on the nature of the calls and the traffic.

One of the things that would tend me to believe she would be handling fewer than in the average law office would be handling long distance calls on a collect basis, which would require her to put the call through and query the party on the receiving end, and that call takes longer to place than the ordinary call from a law office where she just dials the number.

I would anticipate an operator in this situation would probably be able to handle fewer trunklines than in the typical law office situation.

MR. CORSI: If I may make two points on that, one is that as the Warden has indicated, and as I have stated previously, he wants to look at the syste- and see if there is capacity of an operator to handle more trunk lines. That we can only tell once the system is initiated.

In addition to the comments that Mr. Katkin made, not only does she have to place the calls, or he place the calls, the operator would also have to try to monitor the length of time that the call will stay in.

We believe the operator would have to keep close tabs on that, because if the other end of the telephone conversation remains open -- I'm sorry, hangs up, and the line remains open, there is a possibility of getting out to th outside operator again and we would have some of the problems of fraud possibly, so the operator is going to have to be quite diligent in immediately disconnecting calls when the time period is up, and then cranking up the system again to accept another call so that other inmates can use the system.

THE COURT: I am inclined to think, Mr. Corsi, as I look at Mr. Warden Taylor's affidavit, and the amounts of money, and so on, involved, that if we were to accept his proposal as a working approach to a compromise we would have to increase the number of trunklines.

I see no justification for putting in so few in the light of the population figures you have given me when the installation charge is so low and then hoping it will work out and taking a look-see, and all that. I thinkyou ought to put in at least ten, and if it turns out to be too many it's no great less, whereas if it turns out to be too few you are all back here fighting some more, and I would rather see you be a little bit on the generous side, at least in that respect.

Let's postpone any final preliminary views on that.

MR. CORSI: There was an additional affidavit the government wishes to submit, and I failed to give you a copy of Exhibit A to Warden Taylor's affidavit. Counsel for the relators have been given a copy of that additional affidavit, and I have supplied a copy of Exhibit A to Mr. Young.

THE COURT: Why are you specially handing all this to me now? What do I need particularly to know?

MR. CORSI: It discusses the alternatives discussed between the Bureau of Prisons and the Telephone Company, and it is from the Telephone Company.

THE COURT: As long as you gave me this, and I am doing my usual speed reading with it, my eye lights on the Centrex, and I am going to ask you about that.

If you are thinking of compromises, what about putting in half a dozen phones limited to the 516, 914 and 201 area codes, and in that way lighten the pressure on the longer long distance lines and make a more rational distribution of these facilities?

What is the objection to using Centrex which was proposed to you but does not appear to be any part, unless I am mistaken, of Warden Taylor's proposal?

MR. CORSI: It is not a part of the Warden's proposal. The Warden did consider, and is continuing to consider, the possibility of Centrex, your Honor. At the present time, though, we can't seem to get a handle on just how much a limited Centrex system would cost. The primary factor is not the rental of equipment. That is a known quantity and it is relatively modest. But the monthlybilling would depend upon the useage of that system, and I am informed that even within, for instance, the

914 area code to call Yonkers, which would cost one amount, to call Rockland County would cost substantially more.

What we envision is there would have to be a very close monitoring by additional MCC personnel to insure that the charges that would be incurred by the MCC would remain within reasonable limits. That would require more in the way of manpower requirements. In addition, we still would have to install some type of long distance capability in order to allow people to call outside whatever the Centrex area is.

These are proposals that are still under consideration. If we can work out a system which would rationally hold down the cost to a reasonable and feasible limit then Centrex may in fact be the answer, but --

THE COURT: But you are not even trying it. You said you are experimenting. You are making an experiment leaving Centrex out entirely.

MR. CORSI: As an initial matter, yes.

THE COURT: That's what I am asking. Why as an intial matter don't you expand the horizons of that experiment and put in Centrex phones and see how they work?

MR. CORSI: It appears thecost of them could easily ge- out of hand, because there would have to be additional monitoring by MCC personnel to insure that the calls are not --

THE COURT: Let me understand that. On a Centrex phone can you use a credit card?

MR. CORSI: No,

THE COURT: Then it has to use money?

MR. CORSI: No, your Honor. The charges are incurred on a monthly basis by the MCC.

THE COURT: Who would place the call on the Centrex phone?

MR. CORSI: Whoever had physicalaccess to that phone. For instance, if a person wanted to call on Centrex to 516, he would pick up the phone, dial 516, and he's there at the 516 number. He could not, for instance, get to the operator on that. This is my understanding. He could not go beyond 516. He would be limited to 516.

THE COURT: If an inmate wanted to make a call to 516, how would he do it with Centrex equipment?

MR. CORSI: Presumably he would have to go to a correctional officer, or the case worker on the particular floor, on which the inmate resides, and ask to put through a Centrex call.

The charges for that call would be billed on a monthly basis to the MCC.

THE COURT: So that if there were a room where some correction officer sat or hung out you could ask in each case that the charges be read back by the operator, could not not?

MR. KATKIN: No, your Honor. The Centrex telephones would be just ordinary black telephones as on your desk which would be connected directly into the Centrex switching machine. It would have no access to an operator, would not have the possibility of reaching an operator. Whoever wanted to could pick up the phone and dial any number the switching machine was prepared to accept from that telephone.

THE COURT: So you would have the complication of figuring out what inmate A's phone call cost?

MR. KATKIN: I believe the concept is thatthe government would pick up the charges for those Centrex telephones. Those telephones would be billed by the Telephone Company directly to the MCC as the subscriber, and whether or not the MCC had the capability to recover those costs from individual inmates would be doubtful.

MR. YOUNG: Could I ask one question along that line?

Are you aware whether that system is employed by any of the New York City or New York State correctional facilities?

MR. KATKIN: I believe it is utilized by a New York City correctional facility. My associate advises me that the Queens, Brooklyn, and Manhattan Houses of Detention utilize the Centrex.

THE COURT: How do they handle it?

MR. KATKIN: The billing is to the city correctional facility,and they pay the bills.

THE COURT: Do you know whether theytry to recoup from the inmates making telephone calls?

MR.KATKIN: I do not know for sure. To my knowledge, they do not.

THE COURT: And the city is bankrupt, and the federal government is being conservatively managed, and maybe almost as solvent as the city.

MR. YOUNG: Could I ask one more question? I am just wondering on the switchboard idea being considered by MCC would it be possible to use pay phones going through that switchboard so an inmabe could pay for the call himself if he wanted to use the phone, but having the operator make sure it was not being charged to a credit card?

MR. KATKIN: That is not technically feasible. The logic must come from the central office switching equipment, and it would not be feasible through the switchboard.

THE COURT: Mr. Corsi, I have one other problem before I let Mr. Young resume his problems with the Warden's proposal.

I am not clear why it is thought necessary that the long distance call be attempted on a collect basis in the first instance. If you are using an operator, and you can charge the inmate's commissary account, or whatever it is, after the recipient of the call has refused to take it collect, and if, as you have indicated,the rigamarole of a collect telephone call makes this more cumbersome anyhow, why don't you start out prima facie allowing these people to make calls the way most of us do in the first place, paying for them and only using collect as the fallback arrangement, rather than the other way around as you have done it?

MR. CORSI: It is basically because we want to try to insure that that operator will spend his or her time placing calls and making as many calls as possible.

What the fear is is that if you get into a system of charging things to commissary accounts when the individual comes on line and says, "I want to make a call and charge it to my commissary account," she has to check, get a slip to make sure that the slip is there filled out. That could probably be done beforehand.

Then she would have to, after the call is placed, get back on the line with the -- she would first have to ask the operator for the time charges on the call. When the call is terminated she would then have to call back the outside operator, the Telephone Company operator, find out what the charges were. She would then have to mark it down on a slip of paper, an authorization form of some sort, and then it would have to go to the billing office where the charge would be made on the individual's commissary card.

By the going through of these steps, your Honor, for the operator it is going to take away time that he or she has to place calls, so in the first instance you would like the calls to be on a collect basis. If it turns out that the individual's attorney or his family will not accept a collect call, then other measures can be taken. Either a special authorization for the call through that switchboard can be handled, or if need be he or she would get access to an institution phone to make a charge call that could be deducted then from the commissary account. But to open it up as a general matter that charge phone calls could be made we think would place a tremendous burden on the operator, and, indeed- would cut down on the number of calls that that operator could reasonably and rationally handle on a given day.

THE COURT: All right. I understand that. I am not sure I agree with it, but I understand what you are saying.

Now, Mr. Young, what other objections do you have to the Warden's proposal?

MR. YOUNG: Specifically, your Honor has already pointed out some of the major ones, namely, the collect call --

THE COURT: What others that I haven't pointed out?

MR. YOUNG: The five-minute limit is something we are concerned about. In a long distance call, suppose the person's family is in Florida. At the end of five minutes his call would be terminated. If he hadn't completed the conversation he would thereafter have to incur the cost of a new call at a later time, and we all know the majority of the cost of a long distance phone call is the first three minutes. Afterward there is a reasonably lower charge.

THE COURT: What do you think is a solution?

MR. YOUNG: Putting in more trunklines.

THE COURT: If there is going to be a time limit anyway, what do you suggest?

MR. YOUNG: At a minimum, ten minutes.

THE COURT: Does that mean you have a maximum, too?

MR. YOUNG: I would prefer a maximum to go along the lines of what they are presently entitled to, unlimited telephone conversations, limited only by their consideration of fellow inmates' needs to use the phone. That is what a person who is able to make bail and is able to use outside phones is entitled to, and I think that is a consideration in this case.

THE COURT: What other objections do you have to the Warden's proposal?

MR. YOUNG: Those are basically all of them, your Honor. We would hope the inmates would be permitted to pay for their own calls and make longer calls, something more closely related to the present system.

THE COURT: That seems to me to be kind of six of one or half a dozen of the other. I think the Warden should be allowed to experiment with that. If a man or woman calls his or her loved one and wants to call collect, and the beloved is in a position to receive it, then the Warden, as I understand his proposal, will have his operator instructed to take the call on a pay basis. Is that right?

MR. CORSI: Either that operator, your HOnor, or through the institution switchboard.

We want, if possible, to preserve that operation so we can keep that board constantly moving and if need be the call could be placed through the institution's phones. That is a separate system.

THE COURT: How does that work as a practical matter? A man waits on line to call, and then the recipient of the call says, "I'm sorry, I can't take a collect call." He has to get on another line to pay.

MR. CORSI: Not necessarily. At that point he could contact his unit manager, correctional officer on the floor, or case worker, tell the problem, and by that point the switchboard that has tried to place the call would know that because the call would have been refused, so it can be verified and then if need be immediate access, if that is necessary, could be given to the inmate to one of the institution's phones.

THE COURT: If you are going to have separate phones for pay and collect in that two-step process, why not have them from the outset? Have a couple of collect phones and a couple of pay phones, and you go to either one, instead of making a person go through those two jumps. You can then experiment, if you really genuinely are interested in experimenting, and see how it works, and you can later shift back and forth.

MR. CORSI: It seemed to me that we would have to then at least initially put on two operators.

THE COURT: It might be. And it might be that your experiment will have to embrace two operators for the time being.

There are only two possibilities. Either you are right about the one operator being enough, or you are wrong. If you are right it will be a very brief period of an added burden, and you will come back and demonstrate it, and we will modify it. If you are wrong, I don't think people who are locked up ought to suffer the injury. I think the government ought to bear it in a situation where we are cutting back from a situation that you and the Telephone Company intially envisioned as being necessary and appropriate.

I realize you have a claim of fraud and whatnot in the background, and I am not discounting it 100 per cent, but I am discounting it a little when it has to be weighed against what deprivations you are going to allow without evidence on a record proving why they should be allowed, and so far we don't have any of that.

MR. CORSI: If I may briefly respond, we think the system provides a reasonable amount of telephone service to both pretrial detainees as well as those individuals who have been convicted of a crime and are at the institution for one reason or another.

We think that the --

THE COURT: You like to think that is what you mean.

MR. CORSI: We believe it meets the legal standard.

THE COURT: How do you know that? You don't have a figures on any of this. Can you tell me how many people are now making long distance telephone calls?

MR. CORSI: No, your Honor.

THE COURT: On those 23 phones?

MR. CORSI: I am informed the Telephone Company can't really even come up with those figures.

THE COURT: So whatever you think is just what you would like to think, and you may be right, but you do not know, and the phone company doesn't know, and, therefore, I don't know. But what I do know is that somebody who built that place thought there ought to be 23 telephones available for local or long distance calls without these restrictions that are now being discussed, and I must look with some doubt on any restrictions and try to accommodate whatever legitimate interests you have and the phone company has, but without just kind of cavalierly saying, "Well, if you are not sure and think it would be all right let the prisoners take the weight of it."

I don't think that is a fair way for us to proceed, and I will not proceed that way on the evidence before me.

I now direct the plaintiffs to file an amended complaint naming the Telephone Company as an additional party. I don't think I should be in the position of fighting ex parte with the Telephone Company.

MR. KATKIN: May I be heard before you finalize that direction?

THE COURT: You havan't been named as a defendant yet, but tomorrow you will be, and if you want to move to dismiss that complaint you may, but their fight is partly with you because your company on a rather abrupt basis so far -s this Court is informed announced to the United States Government, which found itself in a rather disturbingly feeble condition in the face of this announcement that you are just pulling the phones out in the next day or two , and never mind what is needed to serve their prisoners or to accommodate the needs of a lawsuit that they were involved in.

MR. KATKIN: I have to take issue with that, and I beg to take issue with that because that is not the fact.

THE COURT: I said so far as this Court was concerned. I heard about it hours away. I was told by a breathless assistant United States attorney that at that very moment men with naked screwdrivers were roaming about in its correction center about to rip things out of the walls unless somebody did something, and the United States of America couldn't think of anything to do in those emergent circumstances, and that's the way it came to me.

Go ahead, Mr. Katkin.

MR. KATKIN: First, I would like to make our position perfectly clear. We have been, and we stand ready to provide any telephone service in that facility which the government of the United States feels is appropriate to meet its obligation to provide telephone service to detainees in that center.

We have not detained those people. The obligation to provide them with whatever constitutional rights to which they are entitled is not an obligation of the Telephone Company. We do not have them under restraint.

There are 23 public telephone instruments in that facility. The United States Government has been aware since September of 1975 -- that's over a year, or at least a year, your Honor -- that the TelephoneCompany has been facing a serious problem of loss of revenues due to fraudulent toll calls being made from those 23 instruments.

In fact, your Honor, I have motion papers prepared which I would be please to hand up -- the other parties have received them -- in which an affidavit states that our experience in the last six months indicates that 24 per cent of all the suspected toll fraud calls made in the entire Bronx, Manhattan, Westchester, New York metropolitan area, which covers four million public and private telephones -- 24 per cent of all the suspected toll fraud calls are originating from those 23 public telephones.

In the last year the company has lost over $100,000 in fraudulent toll calls. This is not something that the Telephone Company sprung on the government in the last day, the last week, or the last month. We have been discussing this problem with the authorities at that facility for a year, and we indicated to them our willingness to provide any kind of service that they wanted to order, be it Centrex service, be it limited public telephone service, be it any number of configurations that they wanted to order in order to meet their oblgiation, and we still stand willing to do this. But, your Honor, you have put us in a position with your order issued last week of having our service taken from us. We are being obligated to continue to do business in a situation where we are being defrauded at a current ongoing rate of almost $360 a day. We would not leave any such facility in at any other station in our operating area, and see no reason we have to here.

With respect to making us a party, I see no need for it. We are willing to provide telephone service. We have never taken the position we will not provide telephone service. But the position of the government, as far as I can see, has been, "We do not have the funds to provide that telephone service so why don't you do it, Telephone Company?"

I don't believe that is our obligation. I don't think there is any equity involved that makes it our obligation. We are willing to put in any facilities that the government orders or that the Court feels the government should order. There has been no lack of cooperation on our part nor will there be in the future.

THE COURT: I think you make a cogent presentation, Mr. Katkin. Mr. Corsi has sprung up todisagree with you. I don't want at this moment to get between the United States Government and the Telephone Company. I am interested in knowing why if there has been this l-rge-scale fraud the phone company and the United States have not been able to join fordes to find at least a goodly number of perpetrators and prosecute them as a way of deterring misbehavior. A fraudulent call to Mrs. Jones in Sioux City on a certain date oughtto be traceable, or if enough of them are made some of them ought to be traceable.

Passing that, the problem came to this Court as an emergency, and I guess what I have in mind is that it seems to me that in order for a court to have the means of studying this problem without the heat and disturbance of precipitant action being taken I either have to have you under the Court's power for better or worse to maintain the status quo even at the rate, which I must say is not trivial to a federal judge, of $360 a day, or else have you made a party formally for that purpose.

Frankly, I don't intend to keep you under this thumb any longer than is absolutely necessary. Therefore, if we could count on your patience for a few days while we sort out what the federal government must do so that we can move from A to B without feeling that the exigencies of the phone company's situation are crowding us, I would withdraw my direction because I appreciate the difficulty of your position andthe dubiousness of the Court's issuing compulsory orders against you, but I still think I have to do that just as if tomorrow morning the plaintiffs walk in here and tell me that nobody is delivering food to them because farmers have decided they are not going to feed prisoners, I believe it might be my responsibility, subject to what they say in the Second Circuit, to have a word with the farmers.

I don't think judges ought to run prisons, and I am going to get out of this case as fast as I can, but while I am in it I can't have the merchants, especially public utilities, mooting questions that are before me in the normal course of events.

MR. KATKIN: Might I suggest a similar analogy might be it would be questionable if a merchant found himself in a position where the United STates Government refused to pay for the food he was supplying for the prisoners you should force the merchant to keep supplying that food without payment.

THE COURT: It is a serious problem to me, but these people come barging in at a time in 1976 when the prisons are already overheated and a means of communication to the outside world is being cut off. My first obligation is to say let's hold it for a minute while I figure out if they have a legitimate gripe. If they don't, I will dismiss their motion, but I am not going to have the Telephone Company tell me that I don't have to worry about this because they have already decided the question for me. I think that we can't proceed in an orderly judicial process --

MR. KATKIN: I would certainly have no intention of doing that.

May I make a suggestion? There is a service available from the Telephone Company known as semi public telephone service, which is a service commonly found in drug stores and private stores around the city, where there is a coin telephone instrument available to the public, but the owner of the premises is responsible for any fraudulent calls made from that location.

We can maintain the status quo exactly as it is, leave those 23 coin telephone instruments in there while the relators and the government work out their differences, if the service is converted into a position where the government will accept responsibility for the calls made from those telephones in the interim. I believe it is more their obligation than the Telephone Company's.

MR. YOUNG: I could make one comment in connection with the discussion going on. The Telephone Company, first of all, has not identified the number of relators responsible for this fraud that is being perpetrated.

THE COURT: Can you help him with that? Do you know which of your clients --

MR. YOUNG: No. The point is all of our clients are being punished for that.

THE COURT: That is not going to help me very much.

MR. YOUNG: The other point I want to make before your Honor moves is that the Telephone Company does have within its capability the ability to put an operator on these phones and prevent credit card calls which the TelephoneCompany is authorized to prevent, charge of calls to third telephone numbers, which again the Telephone Company originally authorized. It authorized these means for these frauds to be perpetrated, yet it now tells us it is eliminating the only office it has in New York which has the capability of restricting the telephone calls.

THE COURT: Let me ask Mr. Katkin that.

Mr. Katkin, how much difficulty would there be involved for you while this is being worked out on some other basis in plugging these phones into your soon to be abolished manual operator setup? You say it is going to be in existence until December. I would think long before December Messrs. Young and Corsi and the others will have worked out some agreeable arrangement. Why could you not in the meantime use this protective device to prevent yourself from being defrauded, and then let us work at relative leisure to find some new arrangement?

MR. KATKIN: I don't have a dollar figure, but I do have some affidavits and motion papers I would hand up which evidence the fact it would take substantial engineering rearrangement of trunks up to that switchboard and, of course, additional operators' expense on the part of the Telephone Company to then screen those calls. None of this is normal telephone service.

THE COURT: How would that cost for the temporary handling compare with the $360 a day you are now losing?

MR. KATKIN: It would probably be substantially higher, because we know it would be higher than the other alternatives which have been suggested. It would be more expensive than some of the alternatives which have been suggested here today, which is why we felt that it was economically not a practical solution when the intent or purpose can be achieved in a more economical manner.

THE COURT: What do you have to contribute on this point, Mr.Corsi? What about Mr. Katkin's point that as between you and the Telephone Company you ought to be picking up the costs of frauds perpetrated by your guests at the MCC?

MR. CORSI: We think that it is inappropriate for the government to be charged with those costs, particularly in a situation where the government is attempting to propose a very reasonable solution to the problem of fraud. It will give reasonable access to all inmates to telephone facilities both long distance and local calls. We don't think it is appropriate for the fraud to continue for anyone, be it Telephone Company or be it the United States Government.

THE COURT: I udnerstand, but have you been dickering with the phone company, as Mr. Katkin says, for a year with no results?

MR. CORSI: The phone company, as Warden Taylor's affidavit indicates, approximatelya year ago at this time told us that there was fraud going on through the pay phones. We have attempted to assist the phone company in locating and investigating any of the people that we think are suspects in carrying out the fraud.

In addition, as Warden Taylor has indicated in his affidavit, we have talked to the inmates, told them what the problem is, and indicated what some of the consequences could be.

In addition, we have been trying to devise alternate means of tackling this problem. It came up in an immediate way in the latter part of August and the beginning of September, and we have tried to come up with a reasonable solution.

As an ongoing matter, your Honor, I am informed by the Bureau of Prisons personnel that people down in Washington are trying to consider these problems and related problems concerning telephones as an ongoing thing. They haven't yet been able to come up with an acceptable solution.

THE COURT: If the solution or an experimental arrangement along the lines of the Warden's affidavit were to be attempted, how long would it take to make the equipment changes contemplated by that proposal?

MR. CORSI: I understand from the facilities manager -

MR. KATKIN: It would take five days to do the facilies work in the Center, and we could then have the equipment in 24 hours after that, and I would like to assure the Court that if such an arrangement was reached we would certainly take no action to remove the existing telephones or in any way interfere until the system was in. We have no intention of doing that.

THE COURT: I am grateful for that assurance, and I will try to take advantage of it. I don't mean to be swashbuckling on the bench, but at the time the order was issued I felt it to be a necessity. I share your doubts about it, but we are not on the same payroll.

I want to direct counsel for the parties now, in the next approximately 22 hours or sooner -- I mean by 3:30 tomorrow, because I want to fit it into the Court's schedule -- to work out -- and if you wish it in this form I will put it in the form of a preliminary injunction, but I would rather have it in the form of a stipulation -- a modified version of the Warden's proposal for the temporary management of the problem that has emerged in the MCC, and which we have been discussing in connection with this motion.

Those parts of the Warden's proposal that have not been criticized by the plaintiffs or by me in this discussion should be embodied in that stipulation, or will be embodied in that injunction, whichever we wind up with tomorrow. There will, therefore, be still 23 pay phones for local 212 calls. There should be in addition under that iterim arrangement, subject to later examination and modification, ten trunklines available for long distance phone calls.

I believe, and I am going to ask able counsel to talk about this tomorrow and see if you can accommodate each other on this on an experiment basis -- I believe those ought to be divided in some sensible way betweeen phones available for collect calls and phones available for commissary or other payment at this end, the caller's end.

I would appreciate very much if you talk together and consider together in a civilized way the administrative problems involved and the physical setup of the center, and see if you can reach agreement on it.

If you can't, both of you give me your best positions, what you both think is the farthest you can go on this, and I will adopt the better of the two. So try to think of a good position both for you and one that you think is enough better than your adversary's so I will adopt yours rather than the other. I don't know how scientifically I can pretend to resolve this better than that.

I think you ought all overnight to do research that really somebody should have done before today, and maybe you have done it, and I haven't given you a chance to tell me about it. Find out what the forward looking correctional people in Queens and the Bronx and elsewhere have done in the employment of Centrex facilities, and incorporate some Centrex facilities into your stipulation.

Again, I am not yet expert on the floor by floor arrangement in the MCC of where you keep personnel who could stand by and be available to monitor the Centrex, and of course I don't know anything about how the state does this. I -m urging you to work it out, because I believe you can, and I believe you should, at least to try some civilized experiment, and if you don't because of the problem of balancing the interests of the phone company that is in a [illegible]e caught in the middle, and the prisoners who may have to lose something, and the United States Government, which deserves some consideration as well, I will have to make some kind of arbitrary division of the needs and interests. I would rather you make an agreed and considered division that I believe would be superior to what I would do.

I want all that done, and there may be more you want to add when I stop talking, so that the physical work of complying with this order can begin by Thursday morning, September 23rd, and go forward on the approximate schedule that has been outlined to me so that we may take advantage of the Telephone Company's willingness, as stated by counsel, to bear with this situation for another week or so, the time necessary to make the physical revisions.

What I want to know is whether I have omitted any subject of dispute or concern from the t hings I have asked you to take care of between today and tomorrow.

Mr. Young?

MR. YOUNG: Two relatively minor matters. One was our question on the time limit on the phones. You noticed our objection but didn't indicate your position on it.

THE COURT: That's right. I did notice your objection. Could I ask you to talk about it together?

MR. YOUNG: Certainly.

The other was the obligation of signing in advance for long distance calls, which we object to in our papers because we feel this is going to substantially hinder an inmate's ability, for example, if he signs up, makes a phone ca-l, the person isn't there, he can't call back a half hour later because he wouldn't be able to sign up again until the next day.

THE COURT: I would think the ingenuity of a community defender would have risen to that challenge in some other way than abolishing the sign up altogether. Can't you draw up a footnote saying if you sign up and a party is not in you get moved up in line in some way or other? I think you and Mr. Corsi can work that out.

Mr. Corsi, are there any other things I have left out you know about?

MR. CORSI: I don't think so, your Honor.

I would like an opportunity, if we deem it appropriate, to supplement the record by tomorrow withsome additonal material.

THE COURT: You keep supplementing the record and you are getting way past my reading speed, of course.

I wanted you to try to get done by 3:30 tomorrow. We are on trial, and normally I sit to 4:30, but if you all arrive in this courtroom at 3:30 or thereabouts and tell our deputy clerk, Mr. Swanciger, that you have a stipulation for me to sign I will interrupt long enough to sign it. If you tell him that you have some open disagreements we will suspend the proceeding we are in and take care of your disagreements between 3:30 and 4:30, which is what my schedule will require.

So I would like you to function on that schedule. I would hope and like to expect, Mr. Katkin, that in addition to your legal contributions which I appreciate your company will make somebody available to participate in the discussion between these lawyers who may know less about telephones than they should, and to help with technical and mechanical problems along the way.

MR. KATKIN: We have done so up to this time, and we will be glad to continue to do so.

THE COURT: Is there anything else that you wish to say, Mr. Katkin, at this time? Have I misstated or misunderstood your earlier expression that indicated if we can get this ironed out in a weeak you will survive, and if we can't get it done in a week you can press your motion to vacate?

MR. KATKIN: I was hoping we could formally get the restraining order lifted now. I had prepared an order I was hoping to leave with you, and perhaps in conjunction with your signing the stipulation of the parties tomorrow you might be willing to lift that restraining order.

THE COURT: Hand it up to me. If I have everything in line I will be happy to sign it.

I think that takes care of this now. See you all tomorrow at 3:30.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT

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UNITED STATES OF AMERICA ex rel :
LOUIS WOLFISH,
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Relators,
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-vs- : 75 Civ. 6000
:
UNITED STATES OF AMERICA, et al.,
:
Respondents
:
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Before:

HONORABLE MARVIN E. FRANKEL,
District Judge

New York, New York
September 29, 1976--10:50 a.m.

APPEARANCES:

MICHAEL YOUNG, ESQ.,
Legal Aid Society
Attorneys for Relators

ROBERT B. FISKE, ESQ.,
United States Attorney for the
Southern District of New York
BY: LOUIS CORSI, ESQ., and
FREDERICK P. SCHAFFER, ESQ.,
Assistant United States Attorneys

PRESENT:

BURTON K. KATKIN, ESQ., and
ROBERT SCANNELL, ESQ.,
Attorneys for N.Y. Telephone Company

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THE COURT: Where do we stand?

MR. YOUNG: Your Honor, the relator and respondents discussed the proposed order you requested yesterday. We drew up an order containing provisions on which we had agreement, and I have identified, in the covering letter, the areas in which we did not have agreement. In other words, the orders are identically worded as to where we had agreement, and we submitted our proposals on those other areas.

MR. CORSI: Their injunction order concerning sub-paragraph B, he did not list individually the units where long distance phones would be. I have in the proposed order, just so it is quite clear, where the phones would go.

THE COURT: Is there any quarrel about the placement?

MR. YOUNG: No, your Honor.

THE COURT: All right. Let's proceed to the points of disagreement.

I take it the first such point emerges at page 2 of each of these proposed orders under the heading C in the petitioner's version and the No.2 under D in the respondents' version, and that refers to the issue about whether the inmates will be able to make calls that they pay for or will be required, with rather limited exceptions, to proceed by collect calls.

I have read all the papers on that, Mr. Corsi, and I am not persuaded at all that this asserted claim of impossibility can or should be accepted. Indeed, I must confess, I am surprised at the failure of imagination and ingenuity on the part of these government people to surmount these difficulties they we find so appalling, and having gone over this and discussed it with you when you were here before I have heard enough and read enough and considered enough, and I am not going to permit the restriction for which the respondents' contend.

What I am going to do is try, in whatever time it takes, to evolve with both sides, some kind of workable, civilized arrangement that will permit the inmates to pay for their calls, and if the government really cannot achieve an arrangement that accomplishes that, then the federal government must do what much more impecunious local governments seem to be doing, making these calls themselves.

The relators, as they call themselves, do not care what was asked of them. -- I don't have to decide certainly at this stage whether they have a right to it -- but they have a right to have the government figure out some arrangement whereby if they have the money and they mean to be making a lawful telephone call to their families or lawyers and want to pay for the telephone call, they can do that without going through this rigamarole of calling collect and having the MCC verify whether somebody won't accept a collect call, as you require, and then only after that be able to place a call and pay for it as a request.

Point of information, Mr. Corsi: As things stand now, if an inmate wants to make a call and pay for it, and he doesn't have the money in his pocket but he has a commissary account, is there any way he can charge it to his commissary account?

MR. CORSI: Not under the present system.

THE COURT: You don't allow that at all?

MR. CORSI: That's correct.

THE COURT: The first point I would like to confer with you about is whether any arrangement of that nature would be workable to, and desirable for, the government because you don't have it now, and I will not order you to institute it. The relators are only asking that you not diminish their phone service in the ways in which we are concerned.

On the other hand, it seems to me that if the prison authorities could use the commissary device as a partial protection against these fraudulent long distance calls, the government ought to be entitled to do that.

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I gather the relators would be agreeable to that.

MR.CORSI: I am not sure, your Honor, how a commissary system could cut down or in any way change the problem of fraud that is presently faced. The fraud is originating from a system whereby individuals using those telephones are either charging a call to a third-party number or they are using a credit card which is not their own, or a fictitious credit card. I do not think, really, the fraud turns on the question of availability in an inmates pocket of change because, under the rule, the MCC rules -- and a copy of those were attached to the warden's affidavit -- the inmates are allowed to draw up to $2 a week in change from the commissary and, likewise, can accumulate it to $4 in time in change. So I do not think it is the availability or unavailability of money. It is a question of using third-party charge numbers or credit cards. I am not sure that a commissary system would, in any way, cut it down.

THE COURT: What we have to work out by, I would say, 5:00 o'clock today, and not later, is some system that permits the honest inmate to pay for a telephone call and allows the telephone company to protect itself in a reasonable way against being ripped off by the dishonest inmate, and the measure that you propose for strictly collect calls is excessive for that purpose, and we are going to have to find something short of that.

You, yourself, provide in your order that in some cases the inmate would be allowed to make a call that he or she pays for after you have gone through this rigamarole of verifying it. In some measure that's good.

MR. CORSI: May I respond, your Honor?

THE COURT: Before you respond, I want to say, secondly, since I have been using a telephone for half a century, I find a certain measure of unpersuasive exaggeration in the government's papers. It does not say 3 to 5 minutes to find out the charges on a call, otherwise all the pay phones in Grand Central Station would be less available than they are now. The operator gets it and you fling in your quarters and that's that. It takes 60 seconds at the most. At least that's all it takes me. If the phone company is that inefficient you ought to jack them up a little bit.

Now you may respond.

MR. SCHAFFER: If I may respond to the last point, I had some conversation with our technical expert on that matter, and the reason why it takes longer for the MCC to get a charge at the end of a call than it would for the telephone company is that the MCC would not have all the automatic equipment that the telephone company has, and could not have it. What has to happen is that there is an obtaining of the charge by the telephone operator which, as your Honor has pointed out, does not take 3 to 5 mintues. Then that is transmitted via a teletype to the MCC operator and that process, before it comes out on the teletype in front of the MCC operator, we have been informed by the telephone company, would take, on the average, between 3 and 5 minutes, and, therefore, there is no contradiction, your Honor, between that figure and what your Honor has experienced when you are on a pay telephone directly with the TSPS operator.

THE COURT: These inmates are going to be on pay telephones one way or the other.

I have been advised by the government that the commissary account arrangement won't work. so we will not work it. All of us have been in places where you use coin phones, but they are controlled and regulated by an operator, and it seems pretty clear we are going to have to go to them.

It is done in railway stations for free people who can go to the drug store and make a phone call, and it can be done, and will have to be done, in this prison facility where people don't have any alternative. I don't B2 know all the technology, but some arrangement of this kind you are going to have to make today subject to whatever appellate relief you can get, because we have stalled enough and I have gotten enough backing and forthing and almost completed agreements and then no agreement. The time has run out. So what you say may relate to the commissary deal but that's moot. I am talking as to how you work it when it is done with coins and the operator tells you to put them in. I don't know how that is going to work, but it is going to be done.

I assume at some point Mr. Katkin may help us with that. We are going to work it out today. Let's go on that basis os that I don't have to be as crude as the Courts frequently have to be to get this right.

What were you going to say?

MR. CORSI: Your Honor, the reason why there is a provision in the proposed order submitted by the government for some situations for an inmate to charge the call to his commissary account is, in fact, to try to provide some flexibility so that in emergency situations where the inmate must make a long distance call to his lawyer or to the family and they won't accept the charge, he can do it, we just feel, and the institution has gone over this time and time again, with officials at the MCC, that to have that as a general policy would make the system simply unworkable.

THE COURT: I know you feel that, but you know that time has run out for your exchanging feelings with each other. The Court has to make a decision. I have heard you and I have heard you, including hearing you when all except the crossing of one T and dotting of one I remained to have a completely workable system, and it disappeared.

MR. CORSI: I would like to respond to that.

THE COURT: Go ahead.

MR. CORSI: When I came to the Court last week I specifically stated, and I stated again in chambers, that a proposal had just come up, literally, within the hours. I had not had a chance --

THE COURT: Let's not go over that. Literally we had substantially concluded this business.

MR.CORSI: That's not my recollection.

THE COURT: Whatever your recollection is, Mr. Corsi, don't respond to anything else except my efforts to get you to help me to make a just preliminary injunction order which will issue out of this court by this afternoon, and I want to cooperate with you and, if possible, not fight with you.

MR. CORSI: I want to cooperate with the Court too, your Honor.

THE COURT: Let's think, you and Mr. Katkin and Mr. Young and I, about how we can surmount these insurmountable difficulties, and let the people who want to pay for phone calls pay for them if responsible without imposing a burden and liability on the government and to the telephone company.

Mr. Katkin, do you have any thought so contribute to that subject?

MR. KATKIN: Yes, your Honor.

First, on the question of time, just to protect the reputation of my client, I would like to point out that yesterday, upon seeing the papers that were submitted to the Court, I advised Mr. Corsi that the only difficulty we had with his papers was the statement that it took 3 to 5 minutes to get charges on a call because the best of my information is that it ordinarily takes an average of 60 seconds. That is our information at this point.

Secondly, your Honor, it seems to me that almost any of the alternatives recommended by both of the parties are technically feasible and can be carried out. We can have an attendant-type service where the operator completes the call and gets the time and charges, and either collects the money through an instrument or charges it to a commissary account -- any of these arrangements are technically feasible and we are ready to provide any.

The only question is a pure question of economics on the part of the institution as to which it believes will be least costly for it to carry out and supply the necessary service.

THE COURT Can you help them with that? What do you think would be the least costly?

MR. KATKIN: My own estimate would be based upon the analysis here; my colleague agrees with me from the note he handed me just now. On a purely economic basis it would seem to me that administratively the cost of working out a system to get the time and charges on a call from our operator and charge the amount of that call to a commissary account would almost inevitably be less costly than having a system where the facility had to provide operators constantly monitoring each outgoing call and checking the overtime charges on them every 3 minutes and coming back in on the line on a call and insisting on a deposit of further money.

It just seems that the manpower involvement of that kind of call on an ongoing basis, on an ongoing basis ofeach call, is going to be more costly than placing the call initially, getting the time charges on the completed call, and making some kind of an arrangement to charge it to the individual detainee who made the call.

THE COURT: I take it, Mr. Young, that that kind of arrangement, routing the payment through the commissary account and thus cutting out the problem both of false charge accounts -- how else do they cheat, Mr. Corsi?

MR. CORSI: Through credit cards and third-party charging of a call, the charging of a call to some third-party number.

THE COURT: I take it that the commissary arrangement would be acceptable?

MR. YOUNG: Yes, your Honor. In fact, we prepared on page 3, beginning with No.2, it is entitled "The Hotel System," this was one of the proposals that the phone company had put forward some time ago and described, and we have included it in our order.

Our one concern is that the MCC not impose a system which is so difficult with the inmates to deal with that it, in fact, prevents them from making long distance calls. We feel that that proposal would enable them to make long distance calls without too much difficulty.

THE COURT: That's all laid out under your pages 3 and 4?

MR. YOUNG: Yes, your Honor.

THE COURT: Mr. Corsi, unless experience is more persuasive than the papers you have given us shows, that this is horribly complicated, as you people say, I think we are going to go with substantially this arrangement. I am now going to direct you to take an hour or two after we leave here to address these provisions with the warden, having in view that we are not going to negotiate much more, and if you have some good faith proposals -- I'm sure they will be in good faith -- or modification in the interests of efficiency I would ask you to take them up with Mr. Young and see if you can agree on that, and if you cannot I will probably embody this thing that Mr. Young calls "Hotel System" into the order.

MR. CORSI: Yes, your Honor.

THE COURT: I tell you to do this because, as I say, I am absolutely unpersuaded that the barriers to using this cannot be managed, if there is an intention to manage them in the prison facilities.

The remaining question, as I understood it yesterday, and I take it that's the situation now, related to the length of time.

MR. YOUNG: That is D-5 of both proposed orders; Section D Sub-section 5. It is on page 5 of our proposed order and on page 3 of the government's proposed order. The government provides for a 8 hours a day and ours provides for 12 hours a day. At the present time the inmates have 16-1/2 hours a day.

B3 THE COURT: Yes, but under the authorities, as I have read about them in the papers, there seems to be a general leaning to a view that restrictions on the amount of time are reasonable. Do you have any legal authority for your position?

MR. YOUNG: Several of the cases which we cited to you provided for installation of pay phones, which would have provided the inmates with service identical to what the inmates here have at the present time. In other words, at the times they were not locked in they would be able to use the phones for either local --

THE COURT: That added up to 8 hours or so a day.

These people have the relative luxury of knowing they are being locked in; so, in a sense, 8 hours for them, if they are strategically selected, supplying more freedom than 8 hours of unlocked time in other kinds of facilities.

MR. YOUNG: That's true; however, I would point out that given there are going to be 11 trunk lines, only 11 of the 500 inmates can be making a long distance call at any one time. Consequently, for example, during the 3 hours when they can pay reduced rates, which means 5:00 and 8:00, which are the only hours they can make long distance calls under the government's proposal, you would have 500 inmates who might want to call their family or somebody long distance during that period. That's going to put a tremendous burden on the 11 trunk lines going out of that institution.

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We feel that this will alleviate that burden somewhat if we extended 2 hours more into the evening to allow them to make the call during that reduced rate.

THE COURT: It could be, but maybe we can move back to the noon hour, if you like that.

MR. CORSI: If I may interject: In discussions you have aleays made it clear that the time you chose initially the timing of noon to 8:00, you were open for suggestions for a different 8-hour block. We thought that that would be appropriate because it gave some afternoon, around lunchtime, possibly to catch a lawyer or family at home during lunchtime. Also it gave an opportunity to catch people in the early evening.

If a continuous 8-hour block is preferable, the warden is certainly willing to consider that. We have made that clear.

MR. YOUNG: I will point out one thing: At the present time, with 23 long distance phones and 16-1/2 hours a day of telephoning, the telephone system is still severely overtaxed.

THE COURT: We have been around and around that. I don't want to go over the same thing. I remember some things. You don't have any information on the relative use of local and long distance, and neither do I. I am not going

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to assume it is overtaxed because everybody is calling the Orient.

If and when the arrangements we are going to make today prove to be unduly onerous, I am afraid I am here to see from time to time, perhaps with even greater frequency than I necessarily desire, which is not meant to be offensive, but to express the difficulties of a working man, so you can come back. But I am not going to assume that the phones are overtaxed with long distance calls.

Which 8 hours do you want?

MR. YOUNG: I would take 1:00 o'clock to 9:00, your Honor. That balances it for the reduced rate period and the prime area.

THE COURT: You say, Mr. Corsi, that will be acceptable to the government?

MR. CORSI: Yes.

THE COURT: This obviously, to repeat, is slightly experimental. It may work out fine. It may turn out that the residents of the MCC are lined up for hours waiting to make long distance calls in which event I have to be available to you for reconsideration. At that time I will have concrete information and not speculation.

That relatively easy question is settled. We will make it 1:00 to 9:00 p.m.

MR. YOUNG: There did occur one other minor area of dispute last night which I iden[illegible] as E, Sections 2 and 3. The government is opposed to including those sections in any order, and we request that they be. It is on page 5 of our proposed order, Sections 2 and 4, your Honor.

THE COURT: 2 looks all right to me; 3 does not.

But let me ask first, Mr. Corsi, what your ground of opposing to is.

MR. CORSI: Your Honor, it is not directed to the government. We have not asked for the present phone system to be taken out. It is directed towards the New York Telephone Company, and the New York Telephone Company has time and again made representations to the Court which they have completely lived up to, that they would not take the present phone system out until whatever the Court orders is put in place and is working.

THE COURT: This is not directed to the Phone Company yet. The Phone Company has not been named as a defendant here.

MR. CORSI: There is nothing we can possibly do to keep the phone system in, the present phone system.

THE COURT: That's as it may be. There is nothing you can do when the Telephone Company steals into the building in the night and snatches it away, and we will

will cope with that later. I don't see any grounds for your opposition.

MR. CORSI: Your Honor, I think the sub-paragraph is irrelevant.

THE COURT: Let's include that irrelevant sub-paragraph.

The other one seems to me to be premature and perhaps offensive to another agency. It is implicit in the order that the government will do what is necessary to comply with it. I will not tell them that they have to have the necessary personnel and all that. If it turns they don't, again, you will be back here. I assume they will.

We will leave in 2 of the government's version and strike out 3.

Was there anything else you had?

MR. YOUNG: No, your Honor. That's it.

MR. CORSI: Your Honor --

MR. YOUNG: I did have one further thing.

Concerning the pending application to bring the Telephone Company in as a party, the application for a preliminary injunction upon them, upon the signing of the order that your Honor has described, we will withdraw that application.

THE COURT: All right. You remind me of that later in the day. I will sign the thing and be finished with that today. Then, at that point, I suppose I will also sign an order I have sitting around here submitted by Mr. Katkin to vacate the restraint imposed upon the Telephone Company.

MR. YOUNG: As long as the Telephone Company will continue what it has been doing magnanimously up to now and has agreed not to take out the current system.

THE COURT: They have been decent about that. I see no reason to expect anything different.

MR. KATKIN: You may expect continued cooperation from us, and may I point out unless your Honor does vacate that restraining order we would be restrained under its terms from modifying the existing facilities to meet the requirements of the new order your Honor is about to sign.

THE COURT: Remind me. We will have to arrange a schedule of work and a time to reconvene. Remind me that I should sign that, among other things.

MR. CORSI: Your Honor, on the consent embodied in Sub-paragraph C-2, the so-called Hotel System, in that, at this point, your Honor, the way I read it, there will be an additional 11 long distance telephones put in, which would mean there would be a total of 22 long idstance telephones. I want to clarify this to make sure that we are talking about--

MR. YOUNG: It was our feeling that since the respondents had repeatedly insisted it would take them some time after an inmate picked up a phone before they could confirm that that inmate was permitted to make the long distance phone call he wished to make, that an operator could be working on 11 of the long distance calls while the other 11 long distance calls were already in the trunk line.

In other words, there is going to be a trunk line of 11 lines. So 11 long distance calls can be actually taking place at one time. While those long distance calls are taking place the operator can be doing the preliminary work for the other inmates who are on the remaining 11 lines so that as soon as the trunk line is freed up he or she can place a new call into that trunk line.

Under the government's proposal, those trunk lines would be dead much of the time while the operator was doing the preliminary work of confirming that a particular inmate could make a particular long distance call. We have asked for additional phones so the trunk lines could have maximum use.

THE COURT: I don't know how many heads the average operator has, but let's see what Mr. Katkin can tell us about that.

I am sure you followed it, Mr. Katkin. In order to accomplish his purpose without absolutely killing an operator, how many lines do you think would be a reasonable number? In other words, he would like to try to have 11 actual used or telephone conversations nearly all the time. My own hunch, which is not based on any knowledge, is that maybe if you had some number, like 15 or something, it would do his job.

MR. YOUNG: If I could point out, because of the way that the MCC is laid out in units having --

THE COURT: It has to be multiples of 11; is that it?

MR. YOUNG: Yes.

MR. KATKIN: It does not.

MR. YOUNG: You either have one long distance phone in the unit or two.

MR. KATKIN: Technically it does not have to be, but for purposes of the facility it has to do.

THE COURT: Is it a lot more expensive to put in 22 than 11?

MR. KATKIN: No, your Honor. The additional stations would be considered extension stations. I don't know what the current monthly charge is. Maybe it is $2 per telephone for a month just for the station, so we are not talking about very much money for the additional 11 stations.

THE COURT: We could actually afford that, Mr. Corsi.

MR. CORSI: The question I raised did not go to anything concerning expenses. I wanted to know precisely what the proposal meant.

THE COURT: That's what it means: Another 11.

Now that I have heard from the three of you, it does not sound like a bad idea to me. We will have to see how an operator copes with that. Let's try.

MR. SCHAFFER: Your Honor, may I address myself to that last point as to the number of extensions?

Your Honor has indicated that in the next hour or so you wish to have the government's attorney confer with the staff at MCC.

THE COURT: I don't care whether you confer or not. I am leaving you an opportunity to do that; but if you decide you want to talk to each other, that's okay with me.

MR. SCHAFFER: As I understand, your Honor's principal concern in addressing yourself to that problem was that inmates should be able, in some form or other, to pay for their own calls, and collect calls should not be the only alternative. As I understand the relators' proposed order, they have left open to alternatives to the government:

Either a commissary system or a coin box prepaid system.

Your Honor, we would like to give those two alternatives some consideration to see from the institution's point of view which would be the most feasible.

I should point out, though, that if it is to be a prepaid system or use a coin box as opposed to a commissary account system, I have been informed that the number of risers presently in the institution, that means the number of cable pairs that run up and down the building, could only accommodate 11 extensions with a coin box. They could physically accommodate 22 extensions without a coin box under the commissary system; but because in a coin box system you need a line that goes up and one that comes back down again, if the institutions were to install a prepaid system for the time being, at least, the number of extensions could physically only be 11, and it would take somewhere in the neighborhood of 3 to 6 months to complete the necessary alterations to expand the number of coin boxes.

THE COURT: That is refreshing. How does the prepaid system work?

MR. SCHAFFER: There would be two varieties of a prepaid system. One is theone that Mr. Katkin mentioned before. That would be where our operator -- it does have to be our operator, it could not be done by the Telephone

Company operator -- our operator would time the calls and tell the caller to place so much money for the first three minutes and each interval after that, interrupting the call and saying, "Place so much more money or your call will be interrupted."

The alternative -- and I think at this point the more likely alternative, because, as Mr. Katkin pointed out, that will place a tremendous burden on the operation -- the alternative to the prepaid system is, in a sense, a post paid system, namely that the call is made without any money actually being deposited and then, at the end of the call, the MCC operator would get a read-out on the computer terminal as to the charge for that call. The inmate would stay on the line until a read-out came in and then would deposit all of the coins necessary to cover that charge. So, in a sense, we are talking about that system as one possibility and a commissary account as the other.

I simply want to point out to the Court that under a coin system as opposed to a commissary system for the next 3 to 6 months it would simply be impossible to have more than 11 extensions. What we would do is do a traffic study to see if more than 11 extensions would be required, and if they were, we could within that 3 to 6-month period install the necessary installations. But the phone box system, as opposed to the commissary system, uses more cables and, therefore, 22 extensions would be out of the question for the time being.

THE COURT: Did you want to address yourself to that, Mr. Young?

MR. YOUNG: I admittedly lack the expertise of the respondents. From my own experience, when the Phone Company wants to place a line someplace, they have no difficulty in making sure there are a number of risers. They can run out of windows and walls. I find it incredible that they cannot find space to put 11 more lines somewhere in that building. I am sure that the Phone Company, with its ingenuity, could find that.

THE COURT: Mr. Katkin?

MR. KATKIN: They are not our lines. This is not our facility. This is the institutions facilities within the building. We have nothing to do with that. It would be the institution which would have to provide whatever wiring inside the building is necessary to meet the facilities that we bring to the building to carry it up to locations where they want the phones. That's not the Telephone Company's wiring.

THE COURT: Who does that? GSA?

MR. KATKIN: Yes. The contractor, but the

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